



CORNELL UNIVERSITY LAW LIBRARY

The Moak Collection

PURCHASED FOR

The School of Law of Cornell University

And Presented February 14, 1893

IN MEMORY OF

JUDGE DOUGLASS BOARDMAN

FIRST DEAN OF THE SCHOOL

By his Wife and Daughter

A. M. BOARDMAN and ELLEN D. WILLIAMS

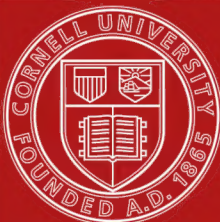
Cornell University Library
KD 7309.B96 1869
v.1

Burn's Justice of the peace and parish o



3 1924 021 871 102

law



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

BURN'S
JUSTICE OF THE PEACE

AND

Parish Officer.

THE THIRTIETH EDITION.

IN FIVE VOLUMES.

EDITED, EXCEPT THE VOLUME OF "POOR,"

By J. B. MAULE, ESQ., Q.C.,

RECORDER OF LEEDS.

VOL. I.

CONTAINING TITLES

"ABATEMENT (PLEAS IN)" TO "DWELLINGS FOR ARTIZANS."

By T. SIRRELL PRITCHARD, Esq.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"QUÆRITUR, UT CRESCUNT TOT MAGNA VOLUMINA LEGIS,
IN PROMITU CAUSA EST, CRESCIT IN ORBE DOLUS."—3 Co. 52.

LONDON :

H. SWEET; MAXWELL & SON; STEVENS & SONS,

Law Booksellers and Publishers.

HODGES, FOSTER & CO., GRAFTON STREET, DUBLIN.

1869.

LONDON :

STEVENS AND RICHARDSON, PRINTERS, 5, GREAT QUEEN STREET, LINCOLN'S INN FIELDS, W.C.

P R E F A C E.

THIS Edition of Dr. Burn's Work contains the Statutes, and Decisions of the Superior Courts, that affect the powers and duties of Justices of the Peace and Parish Officers, to the end of the Parliamentary Session, A.D. 1868.

Those statutes of force only within the Metropolitan district are omitted. They are not of practical use to Justices and Parish Officers acting in Counties and Boroughs of England and Wales, and their number would greatly add to the text of these volumes.

Each volume has an index within it, and can thus be used without referring to a general index at the end of the work.

It was noticed by Whitelocke, two centuries ago, that in the "*great bigness*" to which the volume of statutes had grown soon after the Restoration, there existed an absence of system and clearness. "I remember," he says, "the opinion of a wise and learned statesman and lawyer (the Chancellor Oxenstern), that multiplicity of written laws do but distract the Judges and render the law less certain. That when the law sets due and clear bounds betwixt the prerogative royal and the rights of the people, and gives remedy in private causes, there needs no more laws to be increased, for thereby litigation will be increased likewise. It were a work worthy of a Parliament, and cannot be done otherwise, to cause a review of all our statutes, to repeal such as they shall judge inconvenient to remain in force, to confirm those they shall think fit to stand, and those several statutes which are confused, some repugnant to others, many touching the same matters, to be reduced into certainty, all of one subject into one statute, that perspicuity and clearness may appear in our written laws which at this day few students or sages can find in them."

Before the reign of Henry VII., many statutes, if not all the laws made in the whole reign of a king, it has been remarked, took not up so many leaves as one statute in Henry VIII.'s and Queen Elizabeth's time.

During the nineteen years of Geo. III.'s reign that followed the Union with Ireland, the yearly addition to the statutes averaged

138, filling seven quarto volumes, at the rate of 375 statutes per volume. For eleven years of the reign of Geo. IV., 97 statutes on an average were passed yearly, and four more quarto volumes were added at the rate of 267 statutes for each.

In seven years of William IV.'s reign the statutes increased yearly at the average rate of 93, and added two more quarto volumes, each of 325 statutes.

Taking thirty years of the reign of Queen Victoria, the yearly average growth of public statutes has been a little under 115, and fill fourteen additional quarto volumes, at a rate of 246 statutes in each.

The examination of this great increase of written law, will shew that Whitelocke's suggested remedy has only been partly applied in very late times, and that obsolete statutes, that were inconvenient, have been repealed—while in the remaining multiplicity of written laws there are yet many touching the same matters that could be reduced into one statute, and others so repugnant as to need reduction into certainty. No one, after labouring through the statute book (no longer, as in Whitelocke's time, a mere big volume), can as yet insist that the reproach has been taken away, contained in the remarks of a learned historian, whose great research and sound judgment are undisputed.

"There is not," says he, "any reading more jejune and unprofitable to a philosophical mind than that of our ancient law books. Later times have introduced other inconveniences till the vast extent and multiplicity of our laws have become a practical evil of serious importance, and an evil which, between the timidity of the Legislature on the one hand, and the selfish views of practitioners on the other, is likely to reach in no long period an intolerable excess. Deterred by an interested clamour against innovation from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute and precedent upon precedent, till no industry can acquire nor any intellect digest the mass of learning that grows upon the panting student, and our jurisprudence seems not unlikely to be simplified in the worst and least honourable manner—a tacit agreement of ignorance among its professors. Much indeed has gone into disuetude within the last century, and is known only as an occult science by a small number of adepts. We are thus gradually approaching the crisis of a necessary reformation when our laws, like those of Rome, must be cast into the crucible. It would

be a disgrace in the nineteenth century, if England could not find her Tribonian."

In remote times, the growth of written laws was very gradual; as "our ancestors," says Whitelocke, "used not to make many laws, and those which they did make were commonly in short and clear expressions."

Cæsar narrates (*De Bel. Gal., Lib. vi.*) that by the Druids ("qui fere de omnibus controversiis publicis privatisque constituunt") laws were not allowed to be written. "Neque fas esse existimant ea literis mandare." For this he assigns two reasons. "Id mihi duabus de causis instituisse videntur, quod neque in vulgus disciplinam efferri velint, neque eos qui discunt literis confisos minus memoriæ studere."

But now, though the statutes were in short and clear expressions, even a Druid's memory would succumb, while a safeguard, the reverse of that of the Druids, exists, "ne in vulgus disciplina efferretur."

J. B. M.

INNER TEMPLE,
1869.

CONCLUSION BY DR. BURN.

HAVING thus finished the work proposed, it may be requisite, upon the whole, to subjoin one single reflection, which will occur to every reader in perusing almost every one of the larger titles of this book : and that is, concerning the possibility and expediency of reforming the statute law. The statutes at large, from the very nature of the thing, have, in process of time, become very cumbersome and very intricate. They are not to be purchased but for a larger sum of money, nor to be understood without a greater expense of time, than a wise man would often choose to employ in that way.

The course to be taken in that matter seems to be this :

First, Actually to repeal all those statutes, and parts of statutes, which are *virtually repealed* by subsequent contradictory statutes.

Secondly, To repeal all those statutes which are *obsolete*, and grown out of use, by the alteration of times and circumstances.

Thirdly, To repeal all those statutes which, being neither contradicted by subsequent statutes, nor become obsolete, yet are rendered *useless* by subsequent statutes enacting the same things over again, with alterations and amendments.

Fourthly, To repeal or alter all those statutes which are *frivolous*,—that is, which possibly cannot, or probably never will, be executed : such as those which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no such officer ; or which prohibits an offence under a very small penalty, to be recovered in the courts at Westminster, where the reward will not countervail the expense of recovering it.

Fifthly, To omit all those statutes which, although enacted to be public statutes, yet are only of *private concern* ; such as those for bridges in particular places, or paving the streets in such a market town ; and the like.

Sixthly, As to the rest, to lay all the statutes and clauses of statutes together, which relate to the same subject, and out of the

whole to compose one, two, or more uniform and consistent statutes ; and then to repeal all those other, as workmen destroy the scaffolding when they have erected the building.

I know but of one material objection against this method of proceeding ; and that is, that the law being now for the most part well settled upon the statutes, notwithstanding their acknowledged disorder and confusion, this would tend to unsettle all again, by breaking the connection which there is between one statute and another, and one part of a statute and another, altering the words and phrases, and after all, perhaps, not much mending the matter, since it is possible that the new statutes may be as liable to objections as the former were.

But this is an argument not so much against the thing itself, as against the manner in which it may be executed. As to breaking the connection, it is certain that for the most part there is no connection ; and where there is, that may easily be preserved. And it ought to be laid down as an invariable rule, to retain as much as possible the identical words and sentences of the former statutes, only rejecting what is superfluous, inserting the clear law as it now stands, and putting the same into a form more regular, concise, and easy. And this seemeth no way impossible to be done by any person of a tolerable understanding, endowed only with a clear head and much patience.

TABLE OF TITLES.

A.				PAGE	B.				PAGE
ABATEMENT, PLEAS IN	..	..	..	1	BAIL	...	...	...	361
ABDUCTION OF WOMEN	...	...	...	7	BAKEHOUSES	...	...	...	383
ABORTION	...	...	...	13	BAKER	...	...	...	385
ACCESSARY	...	...	...	16	BANKS FOR SAVINGS	...	...	...	386
ADMIRALTY	...	...	...	41	BANKRUPT	...	...	...	388
ADULTERATION OF ARTICLES OF FOOD OR					BARON COURT	...	...	...	400
DRINK	...	..	...	52	BARRATRY	...	...	...	401
ADVOWSON	...	...	...	57	BASTARDS	...	..	...	402
AFFRAY	...	...	...	57	BATHS AND WASHHOUSES	...	...	...	435
AGRICULTURAL GANGS	...	...	...	61	BENT	...	...	...	445
ALEHOUSE	...	...	...	63	BETTING HOUSES	...	...	..	446
ALIENS	...	...	...	149	BIGAMY	...	...	...	450
ALKALI WORKS	...	..	...	157	BILLIARDS	...	...	...	458
AMBASSADORS	...	..	...	162	BLEACHING AND DYING WORKS	...	...	...	462
AMENDMENT	...	...	...	163	BODIES (DEAD) AND SCHOOLS OF ANATOMY	...	...	...	467
AMICUS CURIAE	...	..	...	173	BREAD	...	...	...	472
ANCHORS AND CHAIN CABLES	...	...	...	173	BRIBERY	...	...	...	498
ANIMALS	...	...	...	174	BRICKS AND TILES	...	..	...	498
ANNUITY	...	...	...	216	BRIDGES	...	...	...	500
APPEAL	...	...	...	218	BURGLARY	...	...	..	545
APPEARANCE	...	...	...	278	BURIALS	...	...	...	565
APPROVER	...	...	...	280	BURIAL OF DEAD BODIES CAST OF SHORE	...	...	...	591
ARRAIGNMENT	...	...	...	282	BUTCHER	...	...	...	596
ARREST WITHOUT WARRANT	...	...	...	286	BUTTONS	...	...	...	596
ARSENIC	...	...	...	306	BUYING OF TITLES	...	...	...	600
ASSAULT AND BATTERY	...	...	...	308					
ASSIZES	...	...	...	334					
ATTACHMENT	...	...	...	340					
ATTAINDER	...	...	...	341					
ATTEMPTS AND SOLICITATIONS TO COMMIT									
CRIMES	...	...	...	343					
ATTORNEY	...	...	...	345					
AUTREFOIS ACQUIT	...	...	...	347					
AUTREFOIS ATTAINT	...	...	...	356					
AUTREFOIS CONVICT	...	...	...	356					
AWARD	...	...	...	359					

C.

CALENDAR	...	...	...	601
CARDS	...	...	...	601
CARRIERS	...	...	...	601
CARTRIDGES	...	...	..	602
CEMETERY	...	...	...	602
CENTRAL CRIMINAL COURT	...	..	...	606
CERTIORARI	...	...	..	615
CHALLENGE TO FIGHT	...	...	...	667

TABLE OF SUB-MATTERS REFERRED TO OTHER TITLES.

The following subjects alphabetically arranged, and formerly scattered through the text of this volume, have been here collected for reference, and are dealt with under the titles set opposite to them.

A.

- | | |
|---|--|
| <p>ABATEMENT OF NUISANCES, <i>see</i> Nuisance</p> <p>ABETTOR, <i>see</i> Accessary</p> <p>ABJURATION, OATH OF, <i>see</i> Oaths</p> <p>ACCEPTANCE, <i>see</i> Bill of Exchange—Forgery</p> <p>ACCOMPLICE, <i>see</i> Accessary—Approver—Evidence</p> <p>ACCUSATIONS, <i>see</i> Robbery—Threats</p> <p>ACQUITTAL, <i>see</i> Autrefois Acquit</p> <p>ACT OF STATE, <i>see</i> Evidence</p> <p>ACTS OF PARLIAMENT, <i>see</i> Indictment—Evidence—Statutes</p> <p>ACTIONS AGAINST MAGISTRATES, <i>see</i> Justices of the Peace—Constables</p> <p>ACTION, POPULAR, <i>see</i> Information</p> <p>ACTORS, <i>see</i> Players</p> <p>ADDITION, <i>see</i> Indictment—Abatement—Conviction</p> <p>ADJOURNMENT—of Examination, <i>see</i> Conviction—Commitment; of Hearing of Information, <i>see</i> Conviction; of Hearing of Appeal, <i>see</i> Appeal; of Giving Judgment, <i>see</i> Judgment; of Sessions, <i>see</i> Sessions; of Trials in General, <i>see</i> Trial</p> <p>ADJUDICATION, <i>see</i> Judgment—Order—Conviction—Homicide</p> <p>ADMINISTERING POISON, <i>see</i> Abortion—Homicide</p> <p>ADMINISTERING OATHS, <i>see</i> Oaths</p> <p>ADMINISTRATION, LETTERS OF, <i>see</i> Evidence</p> <p>ADMISSIONS, <i>see</i> Confession—Evidence</p> <p>AD QUOD DAMNUM, WRIT OF, <i>see</i> Highways</p> <p>ADULTERY, <i>see</i> Bastardy</p> <p>ADVERTISING FOR STOLEN GOODS, <i>see</i> Larceny</p> | <p>ADVERTISEMENTS IN NEWSPAPERS, DUTY ON, <i>see</i> Newspapers</p> <p>ASSESSORS, <i>see</i> Leet</p> <p>AFFIDAVIT, <i>see</i> Oath—Evidence—Abatement—Information</p> <p>AFFIRMATION OF QUAKERS, &c., <i>see</i> Oath—Evidence</p> <p>AGENTS, <i>see</i> Annuity—Larceny—Evidence—Libel—Accessary</p> <p>AIDERS, <i>see</i> Accessary</p> <p>ALLEGIANCE, <i>see</i> Treason—Oaths—Leet</p> <p>ALMANAC, <i>see</i> Evidence—Time</p> <p>ALTERATION OF PROCEEDINGS, <i>see</i> Amendment</p> <p>AMBIGUITY, <i>see</i> Indictment—Evidence</p> <p>AMENDS, TENDER OF, <i>see</i> Justice of the Peace</p> <p>AMERCEMENT, <i>see</i> Fines, Leet</p> <p>AMICABLE CONTEST, <i>see</i> Assault—Fighting</p> <p>ANATOMY, <i>see</i> Bodies—Physicians</p> <p>ANCIENT MAPS OR DEEDS, <i>see</i> Evidence</p> <p>ANGLING, <i>see</i> Fish</p> <p>ANSWER IN CHANCERY, <i>see</i> Evidence</p> <p>APOTHECARY, <i>see</i> Medical Practitioners</p> <p>APPAREL, <i>see</i> Assault</p> <p>APPRAISER, <i>see</i> Excise</p> <p>APPREHENSION OF OFFENDERS, <i>see</i> Arrest</p> <p>APPRENTICES, <i>see</i> Poor—Servants</p> <p>ARBITRATION, <i>see</i> Appeal—Award</p> <p>ARMS AND ARMOUR, <i>see</i> Affray—Fire-arms—Stores</p> <p>ARMORIAL BEARINGS, <i>see</i> Taxes</p> <p>ARMY, <i>see</i> Military Law</p> <p>ARRACK, <i>see</i> Excise</p> <p>ARRAY, CHALLENGE TO, OF JURORS, <i>see</i> Jurors</p> |
|---|--|

ARREST OF JUDGMENT, *see* Indictment—Judgment

ARSENAL, SETTING FIRE TO, *see* Ships—Stores

ARSON, *see* Malicious Injuries to Property

ARTICLES OF THE PEACE, *see* Surety for Peace

ARTICLES OF WAR, *see* Evidence—Military Law

ARTICULO MORTIS, DECLARATIONS IN, *see* Evidence

ARTIFICERS, *see* Manufacturers—Servants

ASSES, *see* Animals

ASSEMBLIES, *see* Riot—Disorderly Houses

ATTAINT, *see* Jurors

AUCTION, *see* Excise

AVOWRY, *see* Warrant of Distress

B.

BACKING A WARRANT, *see* Warrant

BADGER BAITING, *see* Animals

BAGATELLE BOARD, *see* Billiards

BAILEE, FRAUDULENT, *see* Larceny

BAILIFF, *see* Constable

BALLAST, *see* Rivers—Ships

BANK BOOKS, EVIDENCE BY, *see* Evidence

BANK NOTES, *see* Forgery—Larceny

BANK OF ENGLAND, EMBEZZLEMENT BY CLERK OF, *see* Larceny

BANK STOCK, *see* Forgery

BANKS, &c., OF RIVERS, INJURIES TO, *see* Malicious Injuries to Property

BANKERS, OFFENCES BY, *see* Larceny—Forgery

BAPTISM, PROOF OF, *see* Evidence—Registers

BARKING OF TREES, *see* Malicious Injuries to Property—Larceny

BARNs, *see* Malicious Injuries to Property

BATHING, *see* Nuisance—Vagrant

BATTEL, APPEAL OF, *see* Appeal

BATTERY, *see* Assault

BAWDY HOUSES, *see* Disorderly houses—Gaming

BEACON, *see* Ships

BEADLE, *see* Arrest—Church—Constable

BEAR BAITING, *see* Animals

BEASTS, *see* Animals—Larceny

BENEFIT BUILDING SOCIETIES, *see* Friendly Societies

BLASPHEMY, *see* Libel—Swearing

BLEACHING GROUNDS, *see* Larceny

BLOOD, CORRUPTION OF, *see* Attainder

BOATS, *see* Ships—Thames—Larceny

BONDS, *see* Forgery

BOROUGH, *see* Corporation—Parliament—Sessions

BOROUGH RATES, *see* Corporation

BOUNDARIES OF COUNTIES, *see* County

BRANDY, *see* Excise

BRASS, *see* Larceny

BRAWLING IN CHURCHYARDS, *see* Church

BREACH OF PEACE, *see* Arrest—Surety of the Peace

BREACH OF PRISON, *see* Escape

BREAKING IN CASE OF BURGLARY, *see* Burglary—Larceny

BREAKING GAOL, *see* Escape—Prison Breaking—Rescue

BREAKING OPEN DOORS, *see* Arrest—Hue and Cry—Warrant

BREWERS, *see* Alehouse—Excise

BRITISH PLATE GLASS COMPANY, *see* Malicious Injuries to Property

BROKER, *see* Annuity—Extortion—Larceny

BROTHEL, *see* Disorderly House

BUGGERY, *see* Sodomy

BULL BAITING, *see* Animals—Highway

BULLION, *see* Coin

BURNING, *see* Malicious Injuries to Property

C.

CABLES, *see* Anchors—Shipping

CABS, *see* Excise

CALICO, *see* Excise

CALVES, *see* Animals—Butcher

CANALS, *see* Constables—Rivers

CANDLES, *see* Excise

CAPIAS, *see* Process

CAPTION OF INDICTMENT, *see* Indictment

CAPTION OF SESSIONS, *see* Sessions

CARNAL KNOWLEDGE, *see* Rape

CARTRIDGES, MANUFACTURE OF, *see* Factories

CASE, *see* Appeal—Conviction—Sessions

CASE STATED BY JUSTICES, *see* Appeal

CATTLE, *see* Animals

CATTLE PLAGUE, *see* Animals—Plague

CERTAINTY, *see* Indictment—Conviction

CERTIFICATE, *see* Felony—Evidence—Escape—Assault—Medical Practitioners—Registers

CHAINS, AS TO HANGING MURDERERS IN, *see* Homicide

CHAIN CABLES, *see* Anchors

CHALLENGE OF JURORS, *see* Jurors

CHAMPERTY, *see* Buying of Titles—Maintenance

CHANCERY PROCEEDINGS, *see* Evidence

CHANCE MEDLEY, *see* Homicide

CHAPEL, *see* Church—Sacrilage
 CHARACTER, EVIDENCE AS TO, *see* Evidence
 CHARGES, *see* Costs
 CHASE, *see* Game
 CHEATS AND FALSE PRETENCES, *see* Larceny
 CHECK ON A BANKER, *see* Forgery—Larceny
 CHELSEA HOSPITAL, OFFENCES RELATING TO,
see Seamen—Indictment
 CHOSSES IN ACTION, *see* Larceny
 CHRISTENING, *see* Evidence
 CHRISTIAN NAME, *see* Indictment
 CIDER, *see* Alehouse—Conviction—Excise
 CINQUE PORTS, *see* Admiralty Court
 CIRCUIT, *see* Assizes—Shire Hall
 CLERK, LARCENY OR EMBEZZLEMENT BY, *see*
 Larceny
 CLERK OF ASSIZE, *see* Assizes
 CLERK OF JUSTICE OF THE PEACE, *see* Justices
 CLERK OF THE MARKET, *see* Market
 CLIPPING MONEY, *see* Coin
 CLOCKMAKERS, *see* Servants
 CLOTH AND CLOTHIERS, *see* Woollen Manu-
 facturers—Servants
 COACHES AND CARTS, *see* Taxes
 COCK-FIGHTING, *see* Animals—Gaming
 COCOA NUTS, *see* Excise
 COFFEE, *see* Excise
 COLLIERIES, *see* Malicious Injuries to Property
 —Mines
 COLONIES, as to Proof of Judgments in, *see*
 Evidence; as to Warrants, *see* War-
 rants—Habeas Corpus
 COMBINATION, *see* Conspiracy
 COMBINATION OF WORKMEN, *see* Conspiracy—
 Servants
 COMMISSION OF JUDGES, *see* Assizes
 COMMISSION OF THE PEACE, *see* Justices
 COMMISSIONERS OF SEWERS, *see* Sewers
 COMMUTATION OF TITHES, *see* Tithes
 COMPENSATION, *see* Costs—Rewards—Railways
 COMPLAINT, *see* Conviction—Order
 COMPOUNDING, *see* Award—Felony—Misde-
 meanour—Information
 COMPROMISE, *see* Award—Felony
 CONCEALMENT OF BIRTH, *see* Malicious Injuries
 to the Person
 CONFEDERACY, *see* Conspiracy
 CONFIDENTIAL COMMUNICATIONS, *see* Evidence
 CONIES, *see* Game
 CONJURATION, *see* Witchcraft—Sessions
 CONSTRUCTION OF STATUTES, *see* Statutes
 CONSTRUCTIVE POSSESSION, &c., IN LARCENY,
see Larceny

CONSUL, CERTIFICATE OF, *see* Evidence
 CONTEMPT, POWER OF JUSTICES TO COMMIT
 FOR, *see* Commitment; AS TO POWER OF
 SESSIONS TO COMMIT FOR, *see* Sessions
 CONTINUANCES, AMENDABLE, *see* Amendment
 COPY OF CONVICTION, *see* Conviction
 COPY OF DEPOSITIONS, *see* Evidence
 COPY OF INDICTMENT, *see* Indictment—Sessions
 COPY OF WRITING, *see* Evidence
 COPYHOLD, *see* Manor—Forfeiture—Forcible
 Entry—Statute
 COPPER, *see* Larceny
 CORDAGE FOR SHIPPING, *see* Ships—Stores
 CORRECTION, *see* Assault
 CORRECTION, HOUSE OF, *see* Gaol
 CORRUPT PRACTICES AT ELECTIONS, *see* Bribery
 —Parliament
 CORRUPTION OF BLOOD, *see* Attainder
 CRIMINAL INFORMATION, *see* Information—
 Justices
 CRIMINAL JUSTICE ACT, *see* Larceny
 CREDIBLE WITNESSES, *see* Evidence
 CROWN CASES RESERVED, *see* Appeal
 CRUELTY TO ANIMALS, *see* Evidence
 CUSTOMS, *see* Excise

D.

DAMAGING GOODS, *see* Malicious Injuries to
 Property
 DANCING, *see* Alehouse
 DAY, *see* Time
 DEAD ANIMALS, DESCRIPTION OF, *see* Indictment
 DEAD BODIES, *see* Bodies—Burial—Church
 DEAD BODIES CAST ON SEA SHORE, *see* Bodies
 —Burial
 DEAF AND DUMB WITNESSES, *see* Evidence
 DEATH, *see* Judgment—Felony—Evidence
 DEATHBED DECLARATIONS, *see* Evidence
 DEBENTURE FOR MONEY, *see* Larceny—Forgery
 DEBTORS, *see* Bankrupt—Gaols
 DECEIT, *see* Cheat
 DECENCY, *see* Nuisance
 DECOY, *see* Game
 DECREE, *see* Evidence
 DEED, *see* Evidence—Larceny—Forgery
 DEED ENROLLED, *see* Evidence
 DEER, *see* Game
 DEER-KEEPERS, ASSAULTS ON, *see* Larceny
 DEFAMATION, *see* Libel
 DEFECTS IN INDICTMENT, *see* Indictment; IN
 CONVICTION, *see* Conviction; IN COM-
 MITMENT, *see* Commitment

DEFENCE, <i>see</i> Assault—Homicide—Sessions— Trial—Conviction	DICE, <i>see</i> Cards and Dice—Gaming
DEGREE, ADDITION OF, <i>see</i> Indictment—Con- viction	DISCONTINUANCE, <i>see</i> Amendment
DEMANDING MONEY, &c., WITH MENACES, <i>see</i> Threats	DISEASED MEAT, <i>see</i> Nuisances
DEPOSITIONS, <i>see</i> Evidence	DISOBEYING ORDER OF JUSTICES, <i>see</i> Order
DEPUTY, <i>see</i> Constable—Coroner—Justices— Clerk of the Peace	DISTRESS BY JUSTICES' WARRANT, <i>see</i> Warrant
DESERTER, <i>see</i> Military Law	DISTRESS FOR RENT, <i>see</i> Warrant of Distress
DESERTING PREMISES BY TENANT, <i>see</i> Landlord and Tenant	DISTRINGAS, <i>see</i> Process
DESTROYING PROPERTY, <i>see</i> Malicious Injuries to Property	DIVINE SERVICE, <i>see</i> Church—Common Prayer
DETAINDER, <i>see</i> Forcible Entry and Detainer— Arrest—Commitment	DOMESDAY BOOK, <i>see</i> Evidence
	DOORS, AS TO BREAKING OPEN OF, <i>see</i> Warrant —House
	DOWER, <i>see</i> Forfeiture
	DRIVING FURIOUSLY, <i>see</i> Stage Carriages—Ho- micide
	DROWNING, MURDER BY, <i>see</i> Homicide

TABLE OF CASES CITED.

A.

Aaron *v.* Alexander, 857
 Abson *v.* Fenton, 899
 Acworth Overseers, *ex parte*, 246
 Adams *v.* Andrews, 698
 — *v.* Colthurst, 688
 — *v.* Rush, 756
 Addis, *ex parte*, 878, 879
 Addison *v.* Preston, Mayor, 1278
 Adey *v.* Theobald, 736
 Adlam *v.* Coulthurst, 745
 Alcock *v.* Andrews, 1027
 Aldridge *ex parte*, 1110, 1123, 1140
 Allen *v.* Wright, 291
 Allison, *ex parte*, 127
 — *in re*, 628
 — *re*, 871, 1157, 1165
 Alsop *v.* Bowtrel, 403, 405
 Amherst *v.* Sommers, 220
 Andrew *v.* Marris, 1021
 Andrews *v.* Cawthorne, 690, 692
 — *v.* Sharp, 1236
 — *v.* Simmons, 746
 Annesley, *ex parte*, 736
 Anon., 163, 279, 282, 320, 378, 407, 625, 642,
 645, 646, 648, 703, 742, 765, 766, 882,
 1006, 1027, 1123, 1152
 Anthony *v.* Seger, 735, 741, 742, 743
 Antony *v.* Cardenham, 409
 Archer *v.* Wellugrice, 1394
 Arnold *v.* Dimsdale, 850, 865, 869
 — *v.* Gaussen, 860, 869
 — *v.* Poole, 1279
 Arrowsmith *v.* Le Mesurier, 302, 305
 Ashdown *v.* Curtis, 266
 Ashford *v.* Thornton, 218
 Ashley's case, 647
 Ashton Parish *v.* Castle Birmidge Chapel, 704
 Astle *v.* Thomas, 736, 748, 755
 Aston, *ex parte*, 847
 Atchley *v.* Sprigg, 404, 406
 Atkins *v.* Bamwell, 757
 — *v.* Kelly, 1019, 1024, 1026
 Atkinson *v.* Sellers, 128, 267
 Attenborough *v.* Kemp, 714, 716
 Att.-Gen. *v.* Aked, 1409
 — *v.* Breton, 685
 — *v.* Henderson, 167
 — *v.* Hitchcock, 414
 — *v.* Lockwood, 82, 106

Att.-Gen. *v.* McLean, 1109, 1143
 — *v.* Norwich, Mayor, 1278
 — *v.* Ray, 166
 — *v.* Ruper, 735
 — *v.* Smith, 167
 — *v.* St. Cross, Master, &c., 750
 — *v.* Wigan, Mayor, 1279
 Ayston *v.* Abbott, 731

B.

Baees *v.* Brand, 295
 Backhouse *v.* Bishop Wearmouth Church-
 wardens, 724
 Badkin *v.* Powell, 857
 Bailey's case, 872
 — *re*, 1140, 1141
 Baines, *in re*, 723
 Baker *v.* Greenhill, 509
 — *v.* Thorogood, 725
 — *v.* Townsend, 359
 — *v.* Wood, 708
 Balasco *v.* Hannaut, 267
 Baldwin's case, 28
 — *v.* Blackmore, 879
 Ball's case, 809
 — *v.* Cross, 704
 Banbury Peerage case, 404, 406
 Bane *v.* Mettyuen, 847, 1129, 1138
 Banks *v.* Goodwin, 265
 Bardin *v.* Calcott, 729
 Barnes *v.* Grant, 715
 — *v.* Shore, 760
 — *v.* White, 865, 875
 Barrett *v.* Stockton Railway Company, 106, n.
 Barrons *v.* Luscombe, 1024
 Bassett *v.* Godschall, 117
 Baston *v.* Carew, 172, 873, 1109, 1110, 1146,
 1147, 1157
 Bates *v.* Mc'Cormick, 208
 — *v.* Winstanley, 1369
 Bathwicke Paving Act, *re*, 1293
 Batkin, *in re*, 724, 730
 Battye *v.* Gresley, 869
 Baxter *v.* Langley, 1397
 Baylis *v.* Strickland, 878, 1269
 Baynes *v.* Brewster, 296, 300
 Beck *v.* Dyson, 1413
 Beckwith *v.* Harding, 701, 746
 — *v.* Philby, 291, 293, 295

- Beechey v. Lides, 1023, 1027
 Beeley v. Wingfield, 359
 Belasco v. Hannant, 122
 Belk v. Broadbent, 301
 Bell v. Oakley, 1025
 Bellis v. Burghall, 1393
 Bennett v. Bonaker, 749, 934
 — v. Watson, 373, 844
 Bensley v. Bignold, 500
 Berry v. Adamson, 302
 Bessel v. Wilson, 314, 1132, 1173
 Besset, *ex parte*, 854, 877
 Biddolf v. Clerk, 642, 646
 Binstead v. Buck, 1414
 Bird v. Jones, 302, 308, 312, 313, 314
 Birley v. Salford Hundred, 1303
 Birmingham Overseers v. Shaw, 220
 Birnie v. Weller, 743
 Bishop v. Curtis, 341
 Blackman v. Simons, 1412
 Blackmore, *ex parte*, 691
 Blackmore's case, 167
 Blades v. Barnard 308, 309
 — v. Higgs, 313
 — v. Usborne, 693, 694, 695, 696, 699
 Blakemore v. Glamorgan Canal Company, 225
 Blaket v. Blizard, 710
 Blanchard v. Bramble, 757
 — v. Lilley, 359
 Bloomfield v. Blake, 979
 Blues, *ex parte*, 229, 239
 Blunt v. Harwood, 708
 Boddenham v. Ricketts, 722
 Boggett v. Frier, 555
 Bolasco v. Hannant, 1397
 Bondfield v. Milner, 163
 Bonnell v. Beighton, 220
 Boote v. Cooper, 301
 Boothroyd, *re*, 1124, 1155
 Bordin v. Calcott, 702
 Bothe's case, 847
 Bott v. Ackroyd, 879, 1145, 1163, 1331
 Bowditch v. Balchin, 291, 297
 Bowdler, *in re* 854, 1157
 Bower, *in re*, 235
 — v. Meltham Inclosure Accounts, 251.
 Bowman, *in re*, 351, 358
 — v. Blyth, 253, 774
 Boynton, *ex parte*, 417, 424
 Brabin v. Tradeni, 695
 Bracy's case, 1147
 Bradley v. Carr, 401
 Bradshaw v. Vaughlon, 352
 Braham v. Joyce, 854, 1157
 Brandling v. Kent, 305
 Brandon v. Old, 125
 Bray v. Somer, 744, 752
 Brayham v. Joyce, 854, 1157
 Brecon v. Gill, 244
 Bremner v. Hall, 737, 744, 748, 755
 Brettel v. Wilmot, 716
 Briant v. Eicke, 165
 Bridgett v. Coyney, 302, 305
 Briggs, *ex parte*, 754
 Brook v. Copeland, 1412
 Brook v. Owen, 737
 Brooke v. Milliken, 1143
 Brooker v. Wood, 96, 107
 Brookshaw v. Hopkins, 1104
 Brosley Inhabitants, *ex parte*, 249
 Broughton v. Jackson, 291, 304, 314
 Brown's case, 9, 547, 552, 555
 Brown, *ex parte*, 873
 — v. Duncan 794
 — v. Nicholson, 97
 — v. Palfry, 704
 Bruce's case, 42
 Brumfit v. Bremner, 772
 Bruton v. Morris, 8
 Bryan v. Whistler, 686, 691
 Bryant, *ex parte*, 391
 — v. Foote, 693, 753
 Buckhurst's case, 1236
 Buckle v. Wrightson, 267
 Buckler's case 1223
 Budge v. Parsons, 208
 Bullocks v. Dods, 341
 Burdett v. Abbott, 846
 Burfoot v. Reynolds, 314
 Burling v. Harley, 1027
 Burnby v. Bollett, 596
 Burnyeat v. Hutchinson, 132
 Burstow v. Henson, 296
 Burton's case, 402
 Burton v. Henson, 314, 734, 749, 750, 765
 — v. Morris, 8
 — v. Wileday, 715
 Bushell's case, 117
 — v. Eastes, 768
 Bussey v. Storey, 514
 Butcher's case, 647
 Butler v. Ford, 1028
 Butt v. Conant, 291
 — v. Fellows, 708
 Butterfield v. Windle, 781, n
 Butterworth and Barker v. Walker and Water-
 house, 701
 Buxton v. Bateman, 699
 Byed v. Windus, 687
 Byerly v. Windus, 693, 695

C.

- Caddock v. Wilbraham, 880
 Cadman's case, 14
 Calcraft v. Gibbs, 1138
 Callaghan v. Twiss, 1235
 Calthorpe v. Axbell, 10
 Campbell v. Maund, 742
 — v. Paddington Inhabitants, 688
 Canadian Prisoners, *re*, 168
 Candlish v. Simpson, 97
 Carleton v. Hutton, 694
 Carpenter v. Mason, 1121
 Carratt v. Morley, 1021
 Carrell's case, 557
 Carruthers, *ex parte*, 1226, 1228
 Carter, *re*, 422
 — v. Murcott, 1138
 Caswell v. Morgan, 1107
 Cathcart v. Hardy, 1121

- Carter v. Graeme, 172, 1115
 Catten v. Barwick, 737
 Caudle v. Seymour, 320, n., 1104, 1110, 1130
 Cave v. Mountain, 627, 846, 851, 853
 Chaddock v. Wilbraham, 880, 1155
 Chamberlain, *ex parte*, 461
 Chance v. Adams, 1123
 Chaney v. Payne, 172, 1112, 1120, 1163
 Chapman v. Robinson, 266
 Charlton v. Alway, 1026
 — v. Ludlow Mayor, 1279
 Charte v. Kennington, 244
 Chesterton v. Farlar, 711, 716, 729
 Child v. Capel, 1126
 Christie v. St. Luke's, Chelsea, 169, 267
 Cirkett, *ex parte*, 764, 765
 Clark v. Gant, 1259
 — v. Willington, 625
 — v. Wood, 879
 — v. Woods, 1024
 Clarke, *re*, 168
 — v. Devey, 1024
 — v. Hague, 209
 — v. Searles, 1394
 Clifford v. Brandon, 60, 978
 — v. Wick, 687, 694
 Cobat's case, 1211
 Cockburn v. Harvey, 731
 Cockroft v. Smith, 312
 Cohen v. Huskisson, 295, 299, 300
 Coe v. Lawrance, 1296
 Colborne v. Stockdale, 1123
 Cole's case, 561
 — v. Coulton, 123, 1107, 1396
 Coles v. Dickenson, 465
 Colley, *ex parte*, 418
 Collier and Bailey, *re*, 648
 — v. Hicks, 314, 1131, 1135, 1221
 Collins v. Hopwood, 781, 785, 789, n., 1143
 — v. Rose, 1026
 Combe v. Pitt, 1225
 Coningsby v. Steed, 1236
 Constable of Holmby case, 1002
 — Limington case, 1002
 Conway v. Lynch, 348
 Cook, *in re*, 1216
 — v. Leonard, 1027
 — v. Nethercote, 60, 296
 Cooper v. Allnut, 743
 — v. Dodd, 691
 — v. Law, 748
 — v. Wandsworth Board of Works, 1126
 — v. Wickham, 756
 Cope v. Cope, 404
 — v. Rowlands, 500
 Copland v. Powell, 1028
 Cornwell v. Sanders, 267, 1138
 Cortis v. Kent Waterworks, 221, 236, 1341
 Corven v. Pym, 702
 Costar v. Hetherington, 319, 351
 Coster v. Wilson, 1139
 Cotton v. Kadwell, 1025
 Coward v. Baddeley, 308, 309, 312
 Cox v. Coleridge, 843
 — v. Goodday, 734, 750
 Coyne v. Brady, 209
- Craven v. Sanderson, 712, 731
 Crow v. Ramsey, 149, n.
 Crepps v. Durden, 386, 1143
 Crook v. Sampson, 687
 Cropper v. Horton, 294, 867
 Crosbie v. Hurley, 768, 773
 Crosby's case, 340
 Cross, *ex parte*, 172, 873
 — v. Salter, 700
 — v. Smith, 644
 — v. Watts, 83, 267
 Crowhurst v. Laversack, 407
 Crozier v. Cundy, 1025
 Culley, *in re*, 1228
 Cumberland v. Rex, 515
 Cumberland Inhabitants v. The King, 532
 Cutten v. Barwick, 737
- D.
- Dale v. Pollard, 721
 Dance v. Lucy, 312
 Daniel v. Phillips, 643
 Daniell v. Philipps, 875, 881
 Dannelly's case, 36
 Daubney v. Cooper, 1130, 1221
 Davie's case, 703
 — v. Bint, 280, 1125
 Davis v. Capper, 305, 306, 851, 854
 — v. Nest, 1119, 1120
 — v. Russell, 291, 293, 295, 301, 304
 Davison v. Gill, 1158
 Davys v. Douglas, 264
 Dawes, *in re*, 1210
 Dawson v. Le Capelain, 341
 — v. Remnant, 132
 Day v. King, 1147
 — v. Peacock, 579
 Deal v. Schofield, 83
 Dean's case, 3
 Dearing's case, 1223
 Dent v. Prudence, 748
 Derecourt v. Corbishley, 59, 296, 300, 305
 De Wall's case, 154
 Dewdney v. Good; 699, 746, 751
 Deybel's case, 1114
 Dickenson v. Brown, 1130
 Dickson v. Doubleday, 1346
 Dobb's case, 560
 Dodson's case, 304
 Dodwell v. Burford, 312
 Doe v. Carter, 547
 — v. Cockell, 747
 — v. Powell, 412
 — v. Terry, 747
 — v. Webster, 746
 Doe d. Auchmuty v. Medcaster, 149, n.
 — d. Birtwistle v. Vardill, 149, n.
 — d. Evans v. Evans, 341
 — d. Griffiths v. Pritchard, 341
 — d. Harris v. Bodenham, 916, n.
 — d. Jackson v. Hiley, 746
 — d. Nicholson v. Middleton, 917, n.
 — d. Stansbury v. Arkwright, 149, n.
 — d. Thomas v. Acklam, 149, n.

Doggett *v.* Catterns, 446
 Donne *v.* Martyn, 998
 Dowell *v.* Benningfield, 1105
 Downing *v.* Capel, 294, 296
 Duffield, *ex parte*, 743
 Duncan *v.* Thwaites, 1227
 Dunn, *re*, 622
 Durrell *v.* Evans, 230

E.

East Dean Overseers *v.* Everett, 1107
 Edgell *v.* Burnaby, 693
 Edwards *v.* Ferris, 305
 — *v.* Hatton, 714
 Egginton's case, 552, n.
 Eggington, *re*, 1268
 — *v.* Lichfield Mayor, &c., 852, 871,
 872, 882, 1157
 Eichorn *v.* Le Maitre, 6, 1386
 Ellis *v.* Kelly, 267
 Elmy *v.* Sawyer, *re*, 172, 880
 Elmore *v.* St. Briavell's, 550
 Elwood *v.* Bullock, 1275
 Elworthy *v.* Bird, 359
 Ely, Bishop of, *v.* Gibbons, 703
 Embleton *v.* Brown, 43
 Emmett *v.* Lye, 312
 Escott *v.* Martin, 690, n.
 Evans *v.* Rees, 1139
 Evelin's case, 738, 743
 Evindon's case, 346
 Exeter's case, Dean and Chapter of, 693

F.

Farlar *v.* Chesterton, 717
 Farr's case, 555
 Farr *v.* Hollis, 1373
 Faulkner's case, 163, 335, 647
 Faulkner *v.* Elger, 742
 Fawcett *v.* Fowles, 220, 1122
 Fenton *v.* Holloway, 126
 Fernandez, *ex parte*, 335, 336
 Fernley *v.* Worthington, 1280
 Ferrer's case, 6
 Fielder, *ex parte*, 1108
 Fielding's case, 455
 Fisher *v.* Howard, 128
 Fixham Tithing case, 244
 Fleeming *v.* Orr, 1413
 Fletcher, *re*, 854, 871, 1119
 — *v.* Calthrop, 1119, 1123
 — *v.* Fletcher, 299
 — *v.* Ingram, 1001
 — *v.* Wilkins, 1026
 Fletton Overseers, *ex parte*, 259
 Flounders, *re*, 639
 Floyd *v.* Barker, 1236
 Folliot *v.* Koetzow, 408, 414, 416
 Forde *v.* Skinner, 810
 Forsyth's case, 399
 Foster's case, 1108
 Foster *v.* Dodd, 569

Foulkes, *ex parte*, 854
 Fox *v.* Gaunt, 291, 296, 301
 Foxcraft's case, 405
 Francis *v.* Ley, 312, 701, 745
 Freeman *v.* Read, 258, 259, 1156
 Fregard *v.* Barnes, 1018, 1056
 Frewen *v.* Hastings, Local Board of Health,
 622
 Friend *v.* Butterfield, 785
 Fry and Greatu *v.* Treasure, 748
 Fryer *v.* Johnson, 691
 Fuller's case, 550
 — *v.* Lane, 687, 693, 694, 695
 Fulwood's case, 8, 9
 Furillio *v.* Crowther, 407
 Furnival *v.* Coombs, 736, 745

G.

Gage *v.* Radford, 302
 Gaitskill *v.* Greathead, 132
 Galliard *v.* Laxton, 302, 1026
 Ganer *v.* Lanesborough, 455
 Ganvill *v.* Utting, 737, 744
 Garbett *v.* Oulsley, 625
 Garbutt *v.* Simpson, 414
 Gardiner *v.* Parker, 745
 — *v.* Whitford, 267
 Garland's case, 552, n.
 Garnett *v.* Ferrand, 314, 1121, 1231, 1236
 — *v.* Messenger, 1394
 Garsington *v.* Holy Trinity, 1006
 Gateshead Justices, *in re*, 1268
 Gathercole *v.* Wade, 711
 Gatton and Milwich Parishes, *re*, 762
 Gay *v.* Matthews, 260
 Gaylor's case, 14, 25
 Gelen *v.* Hall, 846, 1130, 1135
 Genner *v.* Sparkes, 302
 Gerard's case, 345, 346
 Geswood, *re*, 852, 870, 876
 Gibbons *v.* Pepper, 315
 Gibbs *v.* Flight, 709, 738
 Gibson's case, 167
 Giggur's case, 642
 Gilbert *v.* Buzzard, 692
 Giles's case, 117
 Gill *v.* Linvens, 129, 1136
 Gilpin *v.* Rendle, 132
 Gimbert *v.* Coyney, 1018
 Gladwell *v.* Blake, 1018, 1026
 Glever *v.* Hynde, 314
 Glover *v.* Booth, 268
 Goddard *v.* Harris, 782
 Goff, *ex parte*, 878, 879, 880
 Goodall *v.* Lowndes, 316
 Goodman *v.* Goodman, 403
 Goodright *v.* Moss, 406
 Golding *v.* Fenn, 709, 743
 Gosden *v.* Ellick, 1022
 Goslin *v.* Ellison, 742
 Gosling *v.* Veley, 706
 Goss *v.* Jackson, 1158
 Gough's case, 328
 Gough *v.* Jones, 729

Gouldsworth *v.* Knight, 746, 747
 Gourlay, *ex parte*, 846, 868, 871
 Grainger *v.* Hill, 302
 Grant *v.* Browne, 788, n.
 — *v.* Halton, 1138
 Graves *v.* Colby, 1275
 Gray's case, 548
 — *re*, 872, 1140
 — *v.* Cookson, 172
 G. W. Ry. Co. *v.* Maidenhead, 1283
 Green *v.* Bartram, 288
 — *v.* Botheroyd, 1394
 — *v.* Goddard, 313
 Greenway *v.* Hurd, 1028
 Greenwood *v.* Greaves, 717
 Gregory *v.* Brunswick, 978, 981
 — *v.* Regina, 168
 — *v.* Tavernor, 1393
 — *v.* Tuffs, 1393, 1374
 Greig *v.* Bendeno, 122, 1396
 Grenvelt *v.* Burwell, 873
 Griesley's case, 998
 Griffin *v.* Coleman, 60, 291, 293, 295, 296
 — *v.* Dighton, 687, 703
 — *v.* Ellis, 716
 Griffith *v.* Mathews, 696
 Griffiths *v.* Harries, 1155
 — *v.* Read, 735, 750
 Grimes, *ex parte*, 409
 Groenvelt's case, 877
 — *v.* Burwell, 617, 1236
 Groome *v.* Forrester, 877, 881
 Grove *v.* Elliott, 753
 Groves *v.* Hornsey, Rector of, 694, 710
 Guaglieni *v.* Mathews, 1394
 Guppy *v.* Brittlebank, 291
 Gurney *v.* Gurney, 403, 404

H.

Hailes *v.* Marks, 292
 Hall *v.* Clarke, 1146
 — *v.* Ellis, 694
 — *v.* Planner, 750
 — *v.* Wingfield, 236
 Hallett *v.* Brighton Churchwardens, 1283
 Halls *v.* Estcourt, 1249
 Hammond's case, 876
 Hammond, *re*, 872
 — *v.* Howell, 867
 — *v.* Peacock, 1306
 Hamond *v.* Howell, 1236
 Hancock *v.* Somes, 319, 351
 Handcock *v.* Baker, 287, 301, 303
 Hannaford *v.* Hunn, 314
 Hanway *v.* Boulton, 290, 296, 304
 Harber *v.* Rand, 898
 Harcourt *v.* Fox, 768
 Hardcastle *v.* Jones, 464, 465
 Harding *v.* King, 320, 353, 358
 — *v.* Pollock, 768, 1377
 — *v.* Stokes, 498, 1260
 Hardy *v.* King, 316
 — *v.* Murphy, 305
 — *v.* Ryle, 1027

Hargrave *v.* Hargrave, 403
 Harper *v.* Carr, 757
 — *v.* Charlesworth, 900
 Harris *v.* Drewe, 698
 — *v.* Jenns, 127
 — *v.* Tippet, 414
 Harrison, *ex parte*, 418
 — *v.* Forbes, 751
 — *v.* Hodgson, 314
 — *v.* Parker, 502
 — *v.* Southampton, Corporation of, 403
 Harrod *v.* Harrod, 403
 Harrup *v.* Bailey, 221
 Hartley, *re*, 1143
 — *v.* Cook, 762
 — *v.* Harriman, 1413
 — *v.* Hindmarsh, 316, 320, 358
 — *v.* Hooker, 618
 Harvey of Coomb's case, 370
 — *v.* Bridges, 313
 Harwich, Mayor, &c., *re*, 1259
 Hawker *v.* Field, 262, 628, 630
 Hawkin's case, 547
 Hawkins, *ex parte*, 1118, 1119
 — *re*, 1133
 — *v.* Coleman, 693
 — *v.* Compeigne, 693, 695, 713
 Hawes *v.* Pellatt, 715
 Hayling *v.* Okey, 313, 314
 Haylock *v.* Sparke, 868
 Hayward, *ex parte*, 1161
 Hays *v.* Bryant, 408
 Hazeldine *v.* Grove, 294, 1073
 Hearne *v.* Garton, 1108
 Heathcote's Divorce, 404, 405
 Hebden *v.* Bluff, 1121
 Hemslow *v.* Fawcett, 498
 Henderson *v.* Sherborn, 106, n.
 Henn, *ex parte*, 619
 Herring *v.* Walrond, 1395
 Hickley *v.* Stafford Mayor, 1342
 Higham *v.* Ridgway, 407
 Hill *v.* Asken, 714, 716
 — *v.* Bateman, 862
 — *v.* Bayley, 711
 — *v.* Thornecroft, 267, 1101, 1105
 Hinde *v.* Chorlton, 695, 696, 713
 Hipperholme Constables, *in re*, 621
 Hitchcock *v.* Wolford, 702
 Hobbs *v.* Branscomb, 293, 305
 Hodges *v.* Bennett, 413
 Hogg *v.* Ward, 292, 293, 295
 Holdsworth *v.* Dartmouth, 1278
 Holloway, *ex parte*, 770, 257, 261
 Hollyday *v.* Oxenbridge, 287
 Holman *v.* Walders, 3
 Holmby Constable's case, 1002
 Holmes *v.* Bagge, 313, 314, 315
 — *v.* Walsh, 32, 36
 Holroyd *v.* Breare, 401
 Hooke *v.* Wilks, 1118
 Hopkins, *re*, 620
 — *v.* Crowe, 211
 Hopper *v.* Davis, 702
 — *v.* Reeve, 309
 Hopwood, *ex parte*, 1127

Horley *v.* Rogers, 290
 Horn *v.* Noel, 455
 — *v.* Swinford, 378
 Hoskins *v.* Featherstone, 689
 Howarth's case, 290, 296
 — *v.* Coles, 464
 Howell *v.* Jackson, 59, 313, 296
 Howells *v.* Wynne, 26, 266, 1108, 1109
 Hoyer *v.* Bush, 1025
 Hoyle *v.* Oram, 465
 Hubbard *v.* Penrice, 737
 Hudson *v.* Ash, 858
 — *v.* M'Rae, 1138, 1139
 Hughes *v.* Denton, 740
 — *v.* Done, 132
 Hunt's case, 291, 297
 — *v.* Andrews, 1138
 — *v.* Hibbs, 1255
 Huntingtower *v.* Gardiner, 1261
 Huntley, *re*, 361
 — *v.* Luscombe, 858
 Hutchins *v.* Denziloe, 701, 749
 Hutchinson *v.* Lowndes, 646, 851
 Hussey *v.* Leighton, 687
 Huxham *v.* Wheeler, 67, 93
 Huxtable *v.* Jones, 474

I.

Ingle *v.* Bell, 299, 313
 Innes *v.* Wylie, 308
 Inter Starkey and the Churchwardens of Wat-
 lington, 700
 Ireland *v.* Higgins, 1411
 Irving *v.* Wilson, 1026, 1027

J.

Jacob *v.* Dallow, 699
 Jackson *v.* Adams, 745, 751
 — *v.* Courtenay, 763, 764, 765
 — *v.* Oaks, 622
 James *v.* Green, 995, 1367, 1369
 — *v.* Phelps, 1119
 J'Anson *v.* Stuart, 402, 1395
 Jarratt *v.* Steele, 686, 687, 698
 Jay *v.* Webber, 700, 701
 Jeffery's case, 711, 715
 — *ex parte*, 345
 Jenkins *v.* Barrett, 734
 — *v.* Turner, 1413
 Johnson, *ex parte*, 226, 421, 1157, 1163
 Johnson's case, 131
 — *v.* Dealtry, 1369
 — *v.* Friend, 691
 — *v.* Reid, 872, 874
 — *v.* Stanton, 757
 Jones, *ex parte*, 873
 — *v.* Ashburnham, 468
 — *v.* Carmarthen Mayor, 777, 1278
 — *v.* Clay, 315
 — *v.* Davies, 660
 — *v.* Ellis, 699
 — *v.* Gurdon, 1128, 1131

Jones *v.* Huxtable, 486
 — *v.* Johnson, 1283
 — *v.* Machen, 424
 — *v.* Orchard, 378, 659
 — *v.* Owen, 1104
 — *v.* Perry, 1412
 — *v.* Taylor, 267
 — *v.* Vaughan, 1026
 — *v.* Williams, 1028
 Jordin *v.* Crump, 1411
 Jory *v.* Orchard, 1026
 Judge *v.* Cox, 1413

K.

Kay *v.* Grover, 1023, 1025
 Keat *v.* Goldstein, 636
 Keen *v.* Regina, 253
 Keir *v.* Leeman, 316
 Kelly *v.* Tinling, 749
 Kelsey, *ex parte*, 627
 Kemp *v.* Neville 293, 846, 862, 867, 873
 — *v.* Wickes, 690
 Kendall *v.* Wilkinson, 218, 420
 Kent Treasurer *v.* Gravesend, 1307
 Kenward *v.* Knowles, 1405
 Kerchaval's case, 757
 King *v.* Shore, 1259
 Kingston's case, "Duchess of," 453
 Kinloch's case, 3, 283
 Kinnerley *v.* Orpe, 1138
 Kirk *v.* Strickwood, 360
 Kirkman *v.* Shawcross, 65
 Kite, *ex parte*, 1112, 1113
 Kite and Lane's case, 1111, 1112, 1113
 Knapp *v.* St. Mary Willesden, 695
 Knight's case, 58
 — *v.* Gloyne, 710
 Knowlden *v.* Regina, 985, 986
 Kynnaid *v.* Leslie, 341

L.

Labalmondiere *v.* Addison, 1105
 Lacon *v.* Higgins, 456
 Lacy's case, 44
 Lamb *v.* Burnett, 314
 Lambert *v.* Taylor, 1211, 1224
 — *v.* Weall, 714, 725
 Lambe's case, 963
 Lancashire *v.* Staffordshire, 106
 Lanchester *v.* Frewer, 716
 — *v.* Thompson, 716
 — *v.* Tricker, 716
 Lane *v.* Hegberg, 314
 Langley *v.* Chute, 695
 Lannock *v.* Brown, 302, 303
 Latham *v.* Regina, 981 985
 Law *v.* Hodson, 500
 Lawe *v.* King, 294
 Lawrence *v.* Hedger, 295, 298, 299
 Laver's case, 282
 Layton *v.* Hurrey, 210
 Leader *v.* Yell, 71

Leake, *ex parte*, 876, 877
 Leary v. Patrick, 863, 864
 Leatt v. Vine, 1138
 Lee v. Calcraft, 710
 — v. Matthews, 746, 751
 — v. Strain, 267
 Leech v. North Staffordshire Railway Com-
 pany, 508
 Leete v. Hart, 291, 296, 301
 Leewerd v. Basilee, 313
 Leger v. Chichester Dean and Chapter, 703
 Legge v. Edmonds, 404, 405
 Leicester Mayor v. Burgess, 64, 68
 Leigh v. Webb, 301
 Leman v. Goulty, 754
 Lester v. Garland, 1027
 Leverick v. Mercer, 1342, 1329, 1376
 Levett v. Farrar, 58
 Levi v. Levi, 977
 Levy v. Edwards, 59, 296
 Lewis v. Arnold, 296
 — v. Hammond, 1252, 1404
 — v. Levy, 1227
 — v. Rochester Mayor, 1279
 Lichfield Mayor v. Simpson, 1268
 Limington Constable's case, 1002.
 Lindsay v. Leigh, 172, 870
 Little v. Poole, 794, n.
 Littlewood v. Williams, 693
 Liverpool Corporation v. Wright, 776
 Lock v. Sellwood, 1156
 Lodge, *re*, 1360
 Logan v. Burton, 898
 Lomas v. Holmden, 405
 Lomax v. Lomax, 406
 London Union v. Acocks, 264, 267
 Lord v. Standish (Overseers) 361
 Lousley v. Haywood, 695
 Lowe, *ex parte*, 422, 743
 Lumley v. Foster, 4
 Luton Local Board v. Davis, 265, 268
 Lym v. Goldery, 1026
 Lyne, *ex parte*, 378
 Lyon's case, 455

M.

Maherly v. Titterton, 1024, 1073
 M'Clougan v. Clayton, 295
 Machell v. Ellis, 215
 Mackally's case, 297, 302
 Mackinnon v. Penson, 530, 531
 McKone v. Wood, 1412
 Macon v. Newland, 215
 Magdalena Steam Navigation Company v.
 Martin, 162
 * Mainwaring v. Giles, 695, 699
 Mann v. Davers, 1120, 1133
 Mannering, *ex parte*, 721, 1139
 Mansergh, *in re*, 623
 Margate Pier Company v. Hannam, 1374
 Marks, *ex parte*, 389
 — v. Benjamin, 1393
 Marriott v. Shaw, 1143
 — v. Tarpley, 745, 748

Marsh v. Loader, 673
 Marshall v. Ellis, 209, n.
 — v. Pitman, 220
 — v. Rutton, 1108
 Martin v. Escott, 690, n.
 — v. Pridgeon, 125, 1115, 1125, 1136,
 1151, 1431
 — v. Shoppee, 309
 Mason v. Barker, 1126
 — v. Fox, 642
 — v. Newland, 210
 Massey v. Johnson, 172, 876, 1027, 1159, 1162,
 1163
 Matthew v. Biddulph, 288, 291, 296
 — v. Ollerton, 310
 May, *ex parte*, 220, 265
 — v. Burdett, 1412, 1413
 Mayer v. Harding, 265
 Mayhew v. Loche, 844, 852
 — v. Wardlow, 1143
 Maynard's case, 556
 — v. Brand, 703
 Medhurst v. Watt, 994
 Medland v. Paine, 705, 710, 711, 713, 714, 715,
 716, 718
 Mellor v. Heather, 1312
 — v. Leather, 1073
 Mercer v. Davis, 1366
 Merchant Seamen's Society v. Liverpool
 Mayor, 1309
 Mersey Docks v. Cameron, 220
 Meux v. Humphries, 107
 Michell v. Brown, 1108, 1115
 Middlesex Deputy Coroner, *ex parte*, 1210, 1233,
 1235
 Middleton, *ex parte*, 601
 Midelton v. Gale, 1106
 Miles v. Rose, 655
 Millar v. Palmer, 756
 Miller v. Bloomfield, 714
 Mills v. Wilkins, 1159
 Milner, *re*, 1259
 Milton v. Green, 1025
 Milward v. Caffin, 220
 Mirehouse, *re*, 723
 Mitchell's case, 325, 328
 — v. Forster, 1149
 — v. Foster, 412, 1127
 Money v. Leach, 1025
 Montgomery v. Bean, 736
 Moore v. Smith, 85, 268
 Morden v. Porter, 1106
 Morell v. Martin, 1021
 Morgan, *ex parte*, 246
 — v. Brown, 867, 878, 879, 1154
 — v. Cardigan Archdeacon, 735, 738
 — v. Curtis, 694, 695
 — v. Edwards, 265, 266
 — v. Hughes, 1140
 — v. Palmer, 64, 105, 118, 1027
 Moriarty v. Brooks, 313
 Morley, Goods of, 1157
 — v. Greenhalgh, 209
 Morris v. Davis, 404
 — v. Wise, 291, 296
 Mortimore v. Wright, 407

Morton *v.* Tabiner, 715
 Moss *v.* Smith, 455
 Motteram *v.* Eastern Counties Railway, 267
 Moulin *v.* Dallison, 8
 Moyser *v.* Gray, 374
 Moysey *v.* Hillcoat, 752
 Mure *v.* Kaye, 291, 301

N.

Nash's case, 854
 Nash *v.* Reg., 391, 392, 1385
 Nathan *v.* Cohen, 1028
 Naylor *v.* Sharpley, 1236
 Nehuff's case, 625
 Newman *v.* Baker, 267
 — *v.* Bendyshe, 80, 1109, 1116, 1154
 — *v.* Hardwicke, 78, 846, 880, 1157
 Newmarket Railway Company *v.* Bullingham Churchwardens, 235
 Newport Bridge, *re*, 516
 Newton *v.* Bayley, 647
 — *v.* Trigg, 131
 — *v.* Trigge, 64
 Nicholl *v.* Allen, 506, 510, 530
 Nicholson, *ex parte*, 650
 — *v.* Hood, 104
 Nixon *v.* Nanney, 1122, 1158
 Noden *v.* Johnson, 314
 Noell *v.* Nelson, 642
 Nohro, *ex parte*, 634, 639
 Norman *v.* Danger, 757
 Norris *v.* Miller, 453
 North Staffordshire Railway Company *v.* Dale, 507
 Northwaite *v.* Bennett, 745
 Norwich, Mayor of, *v.* Berry, 346
 Nutbrown's case, 550
 Nutting *v.* Johnson, 757

O.

Oakley *v.* Kensington Canal Company, 1027
 O'Connell's case, 991
 Odell *v.* Moreton, 642
 O'Neill *v.* Longman, 330
 Onley *v.* Flower, 312
 — *v.* Gee, 447, 1109, 1113, 1117
 Onslow *v.* Booth, 4
 Ormerod *v.* Chadwick, 707, 723
 Osborn *v.* Veitch, 309
 Osmond *v.* Widdicombe, 520
 Owens *v.* Porter, 132
 Oxfordshire Sheriff, *re*, 337

P.

Paget *v.* Crompton, 711
 Pain, *ex parte*, 1120, 1123
 Painter *v.* Liverpool Gas Company, 1126
 Palmer *v.* Exeter, Bishop of, 702
 — *v.* Forsyth, 645

Palmer *v.* Trower, 414
 Palsgrave *v.* Shrewsbury Churchwardens, 698
 Pantou *v.* Williams, 292
 Parham *v.* Templar, 699
 Parker *v.* Clarke, 766
 — *v.* Flint, 95
 — *v.* Flintt, 65
 — *v.* Green, 123
 Parnell, *ex parte*, 1202, 1235
 Parsons *v.* Alexander, 458
 Parton *v.* William, 295, 1022, 1025, 1027
 Patten *v.* Rhymer, 124
 Pawsey *v.* Gooday, 640
 Peache *v.* Colman, 128
 Peacock *v.* Regina, 265, 268
 Peake *v.* Bourne, 763, 767
 Pearce *v.* Clapham Rector, 700, 701
 Pease *v.* Chaytor, 723
 Peat's case, 457
 Peerless, *re*, 871
 Pellow *v.* Wonford Inhabitants, 1027, 1106
 Pendrell *v.* Pendrell, 404, 405, 406
 Pennell *v.* Uxbridge Churchwardens, 265
 Penny, *re*, 619
 Pepper *v.* Barnard, 695, 699
 Perham, *ex parte*, 330, 332, 1147
 Perth, Earldom of, 341
 Petit *v.* Addington, 844
 Pettman *v.* Bridger, 694, 695
 Phillips *v.* Smith, 163
 Phillips *v.* Maile, 900
 — *v.* Pearce, 747, 749
 Phipps, *re*, 881
 Pierpoint *v.* Brenen, 374
 Piers *v.* Piers, 403
 Pickering *v.* Rudd, 549
 Piggott *v.* Bearblock, 730
 Pigot's case, 1385
 Pinder *v.* Barr, 761
 Pitcher *v.* King, 401
 Pitt *v.* Smith, 126
 Pittman *v.* Bridger, 693
 Polinghorn *v.* Wright, 313
 Pollard *v.* Gerrard, 772
 Pontefract Overseers, *ex parte*, 246
 Postlethwaite *v.* Gibson, 295, 1023, 1025
 Potts *v.* Cambridge, 267, 409
 Poulterer's Company *v.* Phillips, 1275
 Pozzi *v.* Shipton, 602
 Presgrave *v.* Shrewsbury Churchwardens, 694
 Prestidge *v.* Woodman, 1025
 Price *v.* Littlewood, 696
 — *v.* Messenger, 1024
 — *v.* Seeley, 58, 59, 287, 296, 300
 Prickett's case, 701
 — *v.* Gratrex, 878
 Prosser *v.* Hyde, 218, 223, 1164
 Pugh *v.* Griffiths, 303, 546
 Purkis *v.* Huxtable, 122, 267
 Pursell *v.* Horn, 312

Q.

Queen's case, 974
 Quick *v.* Copleton, 468

R.	Reg. or Rex v. Bailey, 546, 549, 558, 968, 972, 1251
Race, <i>re</i> , 676	— <i>v. Baillie</i> , 11
Radwell's case, 405	— <i>v. Bain</i> , 343
Ramsbottom <i>v. Duckworth</i> , 720, 723, 725	— <i>v. Baines</i> , 1117
Rand <i>v. Green</i> , 707, 717	— <i>v. Baker</i> , 308, 622, 635, 646, 1141, 1150
Randall <i>v. Collins</i> , 700	— <i>v. Bakewell</i> , 72, 87
Ransley, <i>ex parte</i> , 1153	— <i>v. Baldry</i> , 964, 966, 969
Ratcliffe's case, 10, 35	— <i>v. Baldwin</i> , 638
Rawlings <i>v. Till</i> , 312	— <i>v. Ball</i> , 556, 809
Rawlins <i>v. Ellis</i> , 854	— <i>v. Banks</i> , 677
Read's Church Service, 705	— <i>v. Bannen</i> , 17, 815
Read <i>v. Coker</i> , 309	— <i>v. Barber</i> , 32, 33
— <i>v. Morgan</i> , 452	— <i>v. Bardell</i> , 361
— <i>v. Storey</i> , 69, 83	— <i>v. Barker</i> , 172, 243, n., 1157, 1161, 1162
Reason <i>v. Lisle</i> , 1118	— <i>v. Barnaby</i> , 1137
Reave <i>v. Poole</i> , 781	— <i>v. Barnard Castle Inhabitants</i> , 654
Reban <i>v. Trevor</i> , 625	— <i>v. Barnes</i> , 242, 247, 395, 876
Rebow <i>v. Bickerton</i> , 712	— <i>v. Barrett</i> , 8, 1106, 1126, 1159, 1320, 1393
Reeve <i>v. Pool</i> , 789, n., 1144	— <i>v. Barronet</i> , 364, 370
— <i>v. Storey</i> , 794, n.	— <i>v. Barthelemy</i> , 370, 621
Reeves <i>v. Yeates</i> , 1105	— <i>v. Bartlett</i> , 340, 853, 971
Reg. or Rex <i>v. —</i> , 1320	— <i>v. Barton</i> , 879, 1145
— <i>v. — Justices</i> , 249	— <i>v. Bartrum</i> , 660
— <i>v. Aberdare Canal Company</i> , 622	— <i>v. Basingstoke Inhabitants</i> , 649
— <i>v. Abergele</i> , 236, 641	— <i>v. Bass</i> , 627, 856, 1106
— <i>v. Abergele Inhabitants</i> , 619, 638	— <i>v. Batchelor</i> , 168
— <i>v. Abney</i> , 718, 727	— <i>v. Bath Recorder</i> , 1283
— <i>v. Ackroyd</i> , 973	— <i>v. Bathwick</i> , 451
— <i>v. Ackwright</i> , 688	— <i>v. Battams</i> , 637, 643, 648
— <i>v. Adams</i> , 379, 1386	— <i>v. Beadle</i> , 258
— <i>v. Adderbury, East</i> , 509, 535	— <i>v. Beale</i> , 343, 498, 678
— <i>v. Alderly</i> , 1106, n.	— <i>v. Beardmore</i> , 364, 368
— <i>v. Adlard</i> , 711, 997	— <i>v. Beathwayt</i> , 622
— <i>v. Aiken</i> , 1126, 1150	— <i>v. Bedfordshire</i> , 532, 537
— <i>v. Alberton</i> , 404	— <i>v. Bedingham</i> , 1107
— <i>v. Aldridge</i> , 990, 1149	— <i>v. Bedwell</i> , 220
— <i>v. Allen</i> , 172, 242, n., 252, 420, 618, 620, 627, 632, 640, 1150, 1161, 1162	— <i>v. Bell</i> , 625, 713, 973
— <i>v. Allington</i> , 1126	— <i>v. Bellamy</i> , 1105, 1134, 1157
— <i>v. Allison</i> , 454	— <i>v. Belton</i> , 115, 246, 253
— <i>v. All Saints, Stamford</i> , 249	— <i>v. Benfield</i> , 315
— <i>v. Amlwch</i> , 169	— <i>v. Benn</i> , 1108, 1126, 1127
— <i>v. Andrews</i> , 368	— <i>v. Bennell</i> , 1134
— <i>v. Anglesea Justices</i> , 631	— <i>v. Bennett</i> , 548, 553, 561
— <i>v. Anon.</i> , 618	— <i>v. Benwell</i> , 1150
— <i>v. Appleby</i> , 974	— <i>v. Berkley</i> , 616, 630, 634
— <i>v. Archdall</i> , 67, 92	— <i>v. Bernard</i> , 269
— <i>v. Ardsley</i> , 640	— <i>v. Berriman</i> , 971, 978
— <i>v. Arlecdon Inhabitants</i> , 234, 247	— <i>v. Berry</i> , 410, 413, 1110, 1126
— <i>v. Armitage</i> , 268	— <i>v. Berwick-on-Tweed</i> , 1369
— <i>v. Arnold</i> , 1122, 1124	— <i>v. Best</i> , 977, 978, 981, 982
— <i>v. Ashburton</i> , 166	— <i>v. Betts</i> , 350
— <i>v. Ashmall</i> , 30, 31, 33, 34	— <i>v. Bezant</i> , 658
— <i>v. Ashton</i> , 125, 1154	— <i>v. Bidwell</i> , 723
— <i>v. Athay</i> , 118	— <i>v. Biers</i> , 981, 1122
— <i>v. Athea</i> , 556	— <i>v. Billingham</i> , 57, 60, 315
— <i>v. Atkinson</i> , 648	— <i>v. Bingham</i> , 120
— <i>v. Attwood</i> , 969	— <i>v. Bingley</i> , 20
— <i>v. Austin</i> , 1113	— <i>v. Binney</i> , 116, 261, 880
— <i>v. Aylesbury</i> , 1343	— <i>v. Bird</i> , 347, 350, 547, 562, 1032
— <i>v. Aylesford Inhabitants</i> , 1343	— <i>v. Birds</i> , 355
— <i>v. Azzopardi</i> , 156	— <i>v. Birkett</i> , 282
— <i>v. Badford</i> , 458	
— <i>v. Badger</i> , 364, 374, 376, 646, 1123	

Reg. or Rex *v.* Birmingham Borough, 1304
 — *v.* Birmingham Churchwardens,
 742
 — *v.* Birmingham and Gloucester
 Railway Company, 509, 1386
 — *v.* Birmingham Rector and Church-
 wardens, 741
 — *v.* Birnie, 1104
 — *v.* Birthenough, 350
 — *v.* Bishop, 370, 655
 — *v.* Bishop Wearmouth, 221
 — *v.* Biswell, 10
 — *v.* Blackawton, 235, 1353
 — *v.* Blackburn, 722
 — *v.* Blackson, 30
 — *v.* Blake, 983, 988
 — *v.* Blakemore, 271
 — *v.* Blane, 156, 409
 — *v.* Blanshard, 250
 — *v.* Blathwayt, 632
 — *v.* Bleasdale, 1143
 — *v.* Blick, 37, 974
 — *v.* Bloxam, 244, 631, 634, 644
 — *v.* Bobbing Inhabitants, 762
 — *v.* Bolam, 1320
 — *v.* Bolton, 423, 618, 619, 652
 — *v.* Bond, 237, 962, 1212, 1283
 — *v.* Booker, 370
 — *v.* Booth, 1001
 — *v.* Bootie, 298
 — *v.* Boswell, 968
 — *v.* Bothill, 641
 — *v.* Bothwick, 19
 — *v.* Boucher, 1298
 — *v.* Boughey, 630, 641
 — *v.* Boulton, 618
 — *v.* Bourne, 347
 — *v.* Bowen, 455, 628, 657, 1386
 — *v.* Bowes, 374
 — *v.* Bowman, 351, 354, 357
 — *v.* Boxall, 636
 — *v.* Boyce Coombe, 361
 — *v.* Bradley, 1115
 — *v.* Bradshaw, 220
 — *v.* Brain, 1002
 — *v.* Bramley, 406, 407
 — *v.* Brampton, 455
 — *v.* Brancaster, 726
 — *v.* Breconshire 503, 532
 — *v.* Brettel, 357
 — *v.* Brice, 546, 549, 560
 — *v.* Brickhall, 1125, 1136
 — *v.* Bridgewater, 1299
 — *v.* Bridgewater Council, 1278
 — *v.* Bridgman, 419
 — *v.* Bridgnorth Mayor, 1251
 — *v.* Brier, 620
 — *v.* Brickhall, 1151
 — *v.* Briggs, 452
 — *v.* Bright, 296
 — *v.* Brighton Inhabitants, 451
 — *v.* Brimilow, 405
 — *v.* Brisac, 981
 — *v.* Brisby, 412, 418, 420, 424
 — *v.* Bristol and Exeter Railway,
 Company, 619, 627

Reg. or Rex *v.* Bristol Recorder, 115
 — *v.* Britton, 964
 — *v.* Brixham, 221
 — *v.* Bromyard Inhabitants, 234
 — *v.* Brooke, 218, 882
 — *v.* Broome, 34
 — *v.* Brotherton, 596
 — *v.* Brown, 3, 59, 250, 283, 299,
 302, 411, 564, 1017, 1108,
 1128
 — *v.* Browne, 416, 423, 1164
 — *v.* Brownell, 340, 341
 — *v.* Brownlow, 1224
 — *v.* Bruce, 149, n.
 — *v.* Brummitt, 272
 — *v.* Brunton, 281
 — *v.* Bryan, 106, 1121, 1136
 — *v.* Buccleugh, 535
 — *v.* Buchanan, 345, 655
 — *v.* Buckingham, 501, 533
 — *v.* Buckingham, Justices of, 713
 — *v.* Buckinghamshire, 502
 — *v.* Buckinghamshire Justices, 254,
 259, 1127
 — *v.* Bucklugh, "Duchess," 510
 — *v.* Bucknall, 509, 534
 — *v.* Bucks Justices, 219, 233, 251,
 413, 417, 422, 501, 503, 505,
 622, 1108
 — *v.* Bull, 17
 — *v.* Bullock, 312, 982
 — *v.* Bunney, 1231
 — *v.* Burgen, 122
 — *v.* Burgess, 343, 618, 634
 — *v.* Burnaby, 1112, 1114, 1124,
 1139
 — *v.* Burrell, 8, 271, 1254, 1312
 — *v.* Burriddle, 31, 36
 — *v.* Burrows, 553
 — *v.* Burton, 767
 — *v.* Bury, 770
 — *v.* Bush, 33
 — *v.* Butler, 342, 1395
 — *v.* Butterfield, 27
 — *v.* Butterwick, 1319
 — *v.* Button, 983, 987
 — *v.* Byron, 717, 718, 722
 — *v.* Cain, 969
 — *v.* Caldecott, 655
 — *v.* Callagher, 369, 370
 — *v.* Callan, 547
 — *v.* Cambridge Journeymen Tail-
 ors, 979
 — *v.* Cambridge Justices, 261
 — *v.* Cambridge Mayor, 1279
 — *v.* Cambridge Recorder, 245
 — *v.* Cambridge Union Guardians,
 253
 — *v.* Cambridgeshire, 638
 — *v.* Cambridgeshire Justices, 249,
 231, 639
 — *v.* Camfield, 554
 — *v.* Cardington, 713
 — *v.* Carey, 340
 — *v.* Carlisle, 335, 374, 977
 — *v.* Carmarthen, 708

Reg. or Rex *v.* Carmarthen Recorder, 1283
 — *v.* Carmarthenshire Justices, 1234
 — *v.* Carnarvonshire Justices, 231,
 232, 237, 241, 410
 — *v.* Carpenter, 537
 — *v.* Carrell, 558, 1251
 — *v.* Cartworth Inhabitants, 631,
 639
 — *v.* Case, 310, 805
 — *v.* Cashiobury, 219, 1143
 — *v.* Cashiobury Justices, 617
 — *v.* Caspar, 30, 32
 — *v.* Cass, 967
 — *v.* Casson, 627
 — *v.* Casterton Inhabitants, 1113
 — *v.* Catesby, 735
 — *v.* Catheral, 1113
 — *v.* Catherall, 878, 1113, 1116,
 1148
 — *v.* Cawston, 261
 — *v.* Chadwick, 29
 — *v.* Chaffey, 340
 — *v.* Chalking, 552, n.
 — *v.* Chamberlain, 352, 353, 357
 — *v.* Chamberlayne, 659
 — *v.* Chambers, 969
 — *v.* Champneys, 849
 — *v.* Chandler, 311, 678, 876, 1113,
 1123, 1128, 1135, 1153, 1156
 — *v.* Chaney, 871, 872
 — *v.* Chapman, 368, 1119
 — *v.* Chappell, 667
 — *v.* Chapple, 27, 36
 — *v.* Charles, 1397
 — *v.* Charlesworth, 79, 166, 348
 — *v.* Chasemore, 642, 644
 — *v.* Chaveney, 1124
 — *v.* Cheere, 467, 1411, n.
 — *v.* Cheeseman, 343
 — *v.* Chelmsford Inhabitants, 1032
 — *v.* Cheltenham, 246, 251
 — *v.* Cheltenham Commissioners,
 244, 620
 — *v.* Chelsea Waterworks Company,
 713
 — *v.* Cheshire Justices, 223, 232, 235,
 240, 241, 249, 417, 422, 423,
 424, 646, 1150, 1161, 1163
 — *v.* Chester Archdeacon, 742
 — *v.* Cheveney, 1117
 — *v.* Cheverton, 971, 973
 — *v.* Chibbingstone Inhabitants, 638
 — *v.* Chidley, 963
 — *v.* Chipp, 1123
 — *v.* Chipping Norton, 624
 — *v.* Chipping Sodbury, 640
 — *v.* Chipps, 1112
 — *v.* Cholsey, 658
 — *v.* Churchill, 713
 — *v.* Clace Inhabitants, 634
 — *v.* Clark, 269, 650, 1016, 1136,
 1212, 1231
 — *v.* Clarke, 347, 377, 562, 676, 999,
 1121, 1124, 1143, 1149
 — *v.* Clayburn, 552, n.
 — *v.* Clayton, 25, 413, 417

Reg. or Rex *v.* Clear, 754
 — *v.* Cleary, 371
 — *v.* Clegg, 417
 — *v.* Clement, 1128
 — *v.* Clewes, 966, 969, 972, 974
 — *v.* Clifford, 17
 — *v.* Clouter, 283
 — *v.* Cluderoy, 271
 — *v.* Cochrane, 987
 — *v.* Cockburn, 222, 1299
 — *v.* Cockermouth Inclosure Act
 Commissioners, 899
 — *v.* Coe, 15
 — *v.* Cogan, 349
 — *v.* Colamins, 1128
 — *v.* Coleridge, 690, 692
 — *v.* Coles, 622, 772, 775
 — *v.* Coleshill Overseers, 582
 — *v.* Collier, 969
 — *v.* Collins, 343, 721, 722, 724,
 1164
 — *v.* Collingham, 899
 — *v.* Collingwood, 342, 409
 — *v.* Combe, 1110
 — *v.* Commins, 1126
 — *v.* Commissioners of Appeal in
 Excise, 244
 — *v.* Consistory Court Official, 729
 — *v.* Constable, 1126
 — *v.* Cook, 252, 621, 654, 655, 1320
 — *v.* Cooke, 3, 4, 5, 6, n., 166, 980,
 1315
 — *v.* Coombs, 359
 — *v.* Cooper, 24, 311, 678, 875
 — *v.* Cope, 407, 847, 980
 — *v.* Corden, 1106, 1111, 1119, 1134,
 1147
 — *v.* Corfe, 742, 1006
 — *v.* Cornelius, 119
 — *v.* Cornforth, 10
 — *v.* Cornwall, 547
 — *v.* Cornwall Justices, 223, 639
 — *v.* Cotesbatch, 361, 359
 — *v.* Cotton, 1108
 — *v.* Court, 969, 970
 — *v.* Coward, 1314
 — *v.* Cowell, 31
 — *v.* Cox, 974
 — *v.* Cracklin, 240
 — *v.* Craddock, 269
 — *v.* Cranshaw, 590
 — *v.* Crawley, 1007
 — *v.* Crawshaw, 447
 — *v.* Cridland, 653, 865, 880, 1155,
 1156, 1143
 — *v.* Crisham, 22
 — *v.* Crisp, 1113, 1152
 — *v.* Crocker, 852
 — *v.* Crofts, 1108
 — *v.* Cross, 395
 — *v.* Crosse, 1211
 — *v.* Crowe, 1329
 — *v.* Crowhurst, 1116
 — *v.* Crowther, 1134, 1141, 1150
 — *v.* Croydon, 966
 — *v.* Cruise, 21

Reg. or Rex	<i>v. Crunden</i> , 1394	Reg. or Rex	<i>v. Dolby</i> , 1233
—	<i>v. Cuddy</i> , 18	—	<i>v. Donald</i> , 713
—	<i>v. Cullen</i> , 452	—	<i>v. Dorsetshire Justices</i> , 228, 516
—	<i>v. Culliford</i> , 285, 1232	—	<i>v. Douglas</i> , 717, 724
—	<i>v. Cumberland</i> , 241, 535, 536	—	<i>v. Downes</i> , 90, 98
—	<i>v. Cumberland Justices</i> , 250, 639, 894, 913	—	<i>v. Downing</i> , 22
—	<i>v. Cummins</i> , 1141	—	<i>v. Doyle</i> , 1319
—	<i>v. Cundick</i> , 467	—	<i>v. D'Oyley</i> , 742
—	<i>v. Cunningham</i> , 42	—	<i>v. Drake</i> , 90, 106, 636
—	<i>v. Curgerwen</i> , 452	—	<i>v. Driscoll</i> , 312
—	<i>v. Curran</i> , 290, 296, 299, 304, 305	—	<i>v. Drury</i> , 347, 353
—	<i>v. Curvan</i> , 295	—	<i>v. Duce</i> , 281
—	<i>v. Cutbush</i> , 876	—	<i>v. Duffin</i> , 467
—	<i>v. Dade</i> , 20	—	<i>v. Duffy</i> , 1386
—	<i>v. Dale</i> , 97, 112	—	<i>v. Dunkley</i> , 326
—	<i>v. Dalton</i> , 379	—	<i>v. Dunn</i> , 36, 641, 967, 1164
—	<i>v. Daman</i> , 1106, 1111, 1117, 1147	—	<i>v. Dursley</i> , 728
—	<i>v. Dannelly</i> , 34	—	<i>v. Dursley Churchwardens</i> , 715, 727, 730
—	<i>v. Dawson</i> , 310	—	<i>v. Dwerryhouse</i> , 1320
—	<i>v. Darley</i> , 166	—	<i>v. Dyer</i> , 19, 1127, 1149
—	<i>v. Daubeney</i> , 744	—	<i>v. Dyke</i> , 282
—	<i>v. Daventry Churchwardens</i> , 754	—	<i>v. Dyson</i> , 18, 22, 25, 287, 288
—	<i>v. Davie</i> , 762	—	<i>v. Eagleton</i> , 342
—	<i>v. Davis</i> , 20, 412, 423, 550, 560, 618, 627, 765, 1142, 1147, 1152	—	<i>v. East Looe Mayor</i> , 1366
—	<i>v. Dawber</i> , 282	—	<i>v. East Stoke Inhabitants</i> , 636, 653
—	<i>v. Dawson</i> , 328	—	<i>v. Eaton</i> , 618, 620, 623, 645, 652, 1163
—	<i>v. Day</i> , 310, 678	—	<i>v. Eccles</i> , 981
—	<i>v. Dayman</i> , 1137	—	<i>v. Ecclesfield</i> , 508
—	<i>v. Dealtry</i> , 390, 391	—	<i>v. Edwards</i> , 64, 221, 326, 374, 654, 980, 984, 1114
—	<i>v. Dean</i> , 621, 983, 1144, 1153	—	<i>v. Eedes</i> , 978
—	<i>v. Deane</i> , 115, 222, 1299, 1302	—	<i>v. Eldershaw</i> , 328, 675
—	<i>v. De Berenger</i> , 979	—	<i>v. Eldridge</i> , 964
—	<i>v. Debtor's Prison</i> , Whitecross Street, Governors, 847	—	<i>v. Ellames</i> , 163
—	<i>v. Delavel</i> , 1394	—	<i>v. Ellis</i> , 971, 1209
—	<i>v. Dempsey</i> , 1159	—	<i>v. Elrington</i> , 316, 358
—	<i>v. Denbighshire</i> , 622	—	<i>v. Else</i> , 23, 808, 820
—	<i>v. Denbighshire Justices</i> , 233, 627, 1405	—	<i>v. Elwell</i> , 644, 878, 1143, 1146, 1153, 1157
—	<i>v. Deny</i> , 315, 319, 1136	—	<i>v. Ely Justices</i> , 116, 258, 507, 771
—	<i>v. D'Eon</i> , 157	—	<i>v. Embden</i> , 347, 348
—	<i>v. Depardo</i> , 155	—	<i>v. Enoch</i> , 968
—	<i>v. Derby</i> , 508	—	<i>v. Esdaile</i> , 978
—	<i>v. Derbyshire Inhabitants</i> , 502	—	<i>v. Eskew</i> , 987
—	<i>v. Derbyshire Justices</i> , 226, 230, 235, 238, 421, 619, 894, 1139	—	<i>v. Esop</i> , 155
—	<i>v. Derrington</i> , 970	—	<i>v. Essex</i> , 529, 1340
—	<i>v. Despard</i> , 852, 853	—	<i>v. Essex Justices</i> , 223, 227, 229, 235, 251, 254, 915
—	<i>v. Devett</i> , 1225	—	<i>v. Evani</i> , 391, 392
—	<i>v. Devon</i> , 223, 501	—	<i>v. Evans</i> , 310, 411, 417, 423
—	<i>v. Devon Justices</i> , 246	—	<i>v. Evered</i> , 871
—	<i>v. Devonshire Justices</i> , 461, 508, 513, 515	—	<i>v. Everett</i> , 498
—	<i>v. Dewhirst</i> , 221	—	<i>v. Evett</i> , 1222, 1224
—	<i>v. Dewsnap</i> , 654	—	<i>v. Exeter Archdeacon</i> , 740
—	<i>v. Dickenson</i> , 645, 647, 652	—	<i>v. Exeter Mayor</i> , 1251
—	<i>v. Dingley</i> , 562	—	<i>v. Exeter Recorder</i> , 261, 422
—	<i>v. Dixon</i> , 340, 472, 642	—	<i>v. Exeter Treasurer</i> , 1319
—	<i>v. Dobbs</i> , 562	—	<i>v. Eye</i> , Mayor of, 1251
—	<i>v. Dobbyn</i> , 1112	—	<i>v. Eyre</i> , 233, 234, 235
—	<i>v. Dobson</i> , 774	—	<i>v. Eyres</i> , 756
—	<i>v. Dolan</i> , 271	—	<i>v. Faderman</i> , 269, 1386
		—	<i>v. Fallon</i> , 30
		—	<i>v. Farewell</i> , 630

Reg. or Rex	<i>v. Farler</i> , 282	Reg. or Rex	<i>v. Gibbons</i> , 551, 557, 969
—	<i>v. Farrington</i> , 249	—	<i>v. Gibson</i> , 3, 4, 6, 552, 1386
—	<i>v. Farrington Without Justices</i> , 117	—	<i>v. Gilberdike Inhabitants</i> , 640
—	<i>v. Farrow</i> , 14	—	<i>v. Gilbert</i> , 1123
—	<i>v. Fearnley</i> , 1386	—	<i>v. Gilbie</i> , 657
—	<i>v. Fearshire</i> , 962	—	<i>v. Gilham</i> , 294, 964, 971
—	<i>v. Featherstone</i> , 270	—	<i>v. Gill</i> , 314, 978, 981
—	<i>v. Feist</i> , 470	—	<i>v. Gillham</i> , 217
—	<i>v. Fell</i> , 620, 851	—	<i>v. Gillies</i> , 467
—	<i>v. Fellowes</i> , 624	—	<i>v. Gillyard</i> , 616, 618, 628
—	<i>v. Fenton</i> , 723	—	<i>v. Glace</i> , 627
—	<i>v. Ferdinand De Mierre</i> , 1000	—	<i>v. Glamorgan</i> , 219
—	<i>v. Ferguson</i> , 625, 989	—	<i>v. Glamorganshire</i> , 504
—	<i>v. Ferrall</i> , 420	—	<i>v. Glamorganshire Inhabitants</i> , 617
—	<i>v. Ferrand</i> , 1209, 1213	—	<i>v. Glamorganshire Justices</i> , 260 515, n.
—	<i>v. Fielding</i> , 980	—	<i>v. Gloucester Justices</i> , 231
—	<i>v. Finmore</i> , 379	—	<i>v. Gloucester Mayor</i> , 1279
—	<i>v. Fisher</i> , 1227	—	<i>v. Gloucestershire</i> , 502, 513
—	<i>v. Fladbury Inhabitants</i> , 246	—	<i>v. Gloucestershire Justices</i> , 223, 236, 241, 251, 254, 422, 914, 1218, 1234
—	<i>v. Flaherty</i> , 456	—	<i>v. Glossop</i> , 1149, 1152, 1156
—	<i>v. Flannagan</i> , 551	—	<i>v. Godolphin</i> , 1103
—	<i>v. Flannings</i> , 1320	—	<i>v. Gogerley</i> , 18
—	<i>v. Fleet</i> , 1227	—	<i>v. Goldshede</i> , 964
—	<i>v. Fletcher</i> , 168, 230, 337, 1114, 1157	—	<i>v. Gompertz</i> , 981, 987
—	<i>v. Flintshire Justices of</i> , 421, 1341	—	<i>v. Goode</i> , 284
—	<i>v. Folkes</i> , 22	—	<i>v. Goodenough</i> , 638, 639
—	<i>v. Folley</i> , 1134	—	<i>v. Gooding</i> , 293, 453
—	<i>v. Ford</i> , 1121	—	<i>v. Goodrich</i> , 250
—	<i>v. Fordham Inhabitants</i> , 642	—	<i>v. Gordon</i> , 28, 390, 854
—	<i>v. Forsyth</i> , 392	—	<i>v. Gorbutt</i> , 350
—	<i>v. Foster</i> , 36, 809, 815	—	<i>v. Goter</i> , 656
—	<i>v. Foulkes</i> , 637	—	<i>v. Goudge</i> , 1002
—	<i>v. Fowler</i> , 619, 620, 978, 984	—	<i>v. Gough</i> , 325
—	<i>v. Fox</i> , 1296	—	<i>v. Gould</i> , 349, 973
—	<i>v. Franchard</i> , 1001	—	<i>v. Gourlay</i> , 853
—	<i>v. Francis</i> , 975	—	<i>v. Grafton, Duke of</i> , 414, 417, 423
—	<i>v. Franks</i> , 808	—	<i>v. Grainger</i> , 4
—	<i>v. Fraser</i> , 453	—	<i>v. Grand Junction Railway</i> , 1223
—	<i>v. Frazer</i> , 10	—	<i>v. Grant</i> , 413
—	<i>v. Frederick</i> , 991	—	<i>v. Gray</i> , 22
—	<i>v. French</i> , 555	—	<i>v. Great Bedwin</i> , 169
—	<i>v. Fretwell</i> , 13	—	<i>v. Great Western Railway Com-</i> <i>pany</i> , 1209
—	<i>v. Frieston Inhabitants</i> , 241, 249	—	<i>v. Green</i> , 10, 348, 418, 424, 965, 970, 1002, 1106, 1123
—	<i>v. Frith</i> , 390	—	<i>v. Greenacre</i> , 1217
—	<i>v. Frost</i> , 165, 166	—	<i>v. Greenaway</i> , 340
—	<i>v. Froud</i> , 592, n.	—	<i>v. Greene</i> , 1269
—	<i>v. Fullarton</i> , 165	—	<i>v. Greenhill</i> , 676
—	<i>v. Fuller</i> , 550, 1104, 1111, 1115, 1117, 1151	—	<i>v. Greenwood</i> , 23, 24, 27, 808, 820
—	<i>v. Furnival</i> , 562	—	<i>v. Gregory</i> , 167, 370, 590, 1314
—	<i>v. Gage</i> , 1133, 1149	—	<i>v. Grevil</i> , 31
—	<i>v. Galloway</i> , 29	—	<i>v. Grey</i> , 977
—	<i>v. Gamlingay</i> , 511	—	<i>v. Griffin</i> , 970, 973, 1107
—	<i>v. Garbett</i> , 965	—	<i>v. Grimshaw</i> , 1205, 1269
—	<i>v. Gardner</i> , 287, 1320	—	<i>v. Grince</i> , 254
—	<i>v. Garner</i> , 271, 966, 969, 972	—	<i>v. Groombridge</i> , 405, 675
—	<i>v. Garside</i> , 281	—	<i>v. Grover</i> , 624
—	<i>v. Gaskin</i> , 764	—	<i>v. Gudridge</i> , 244
—	<i>v. Gaunt</i> , 413	—	<i>v. Guert</i> , 713
—	<i>v. Gaylor</i> , 13	—	<i>v. Guild</i> , 970
—	<i>v. Gener</i> , 998	—	<i>v. Guttridge</i> , 369
—	<i>v. George</i> , 282, 998	—	<i>v. Gwynne</i> , 623, 629
—	<i>v. Gibbon</i> , 414	—	

Reg. or Rex <i>v.</i> Haddock, 279	Reg. or Rex <i>v.</i> Heath, 810
— <i>v.</i> Hague, 1261	— <i>v.</i> Hellier, 116, 260, 628
— <i>v.</i> Haines, 965	— <i>v.</i> Hellingley, 168, 170
— <i>v.</i> Hale, 1148	— <i>v.</i> Helps, 875, 880, 1156, 1159
— <i>v.</i> Halesworth, 1252	— <i>v.</i> Hemp, 979, 984
— <i>v.</i> Hall, 375, 547, 737, 876, 878, 968, 978, 1122, 1126, 1128, 1133, 1141, 1146, 1149, 1153, 1154, 1223	— <i>v.</i> Henderson, 350
— <i>v.</i> Hallard, 550	— <i>v.</i> Hendon, 223, 508
— <i>v.</i> Hamilton, 985, 1065	— <i>v.</i> Hendon Inhabitants, 533
— <i>v.</i> Hammersmith, 2	— <i>v.</i> Henry, 325
— <i>v.</i> Hammond, 1314	— <i>v.</i> Hensey, 283
— <i>v.</i> Hamp, 979	— <i>v.</i> Herefordshire Justices, 227, 231, 241, 639, 1374
— <i>v.</i> Hampshire, 1138	— <i>v.</i> Herford, 1232
— <i>v.</i> Hampshire Justices, 258, 422	— <i>v.</i> Hertfordshire Justices, 226, 241, 244, 245, 639
— <i>v.</i> Hamworth, 536	— <i>v.</i> Hethersal, 1223, 1231
— <i>v.</i> Handley, 10, 17	— <i>v.</i> Hevey, 979
— <i>v.</i> Hankey, 667	— <i>v.</i> Hewett, 966, 968
— <i>v.</i> Hann, 119	— <i>v.</i> Hewins, 166
— <i>v.</i> Hansill, 27, 29, 36	— <i>v.</i> Hewson, 177
— <i>v.</i> Hanson, 106, 115, 219, 310, 617, n., 618, 1135, 1320	— <i>v.</i> Hey, 168
— <i>v.</i> Hants Justices, 219, 220, 258	— <i>v.</i> Heydon, 1224
— <i>v.</i> Hanworth Inhabitants, 532	— <i>v.</i> Hickling, 410, 417
— <i>v.</i> Harburne, 452	— <i>v.</i> Hickman, 687
— <i>v.</i> Harding, 247	— <i>v.</i> Hicks, 1106
— <i>v.</i> Hardwick, 969	— <i>v.</i> Higgins, 25, 342, 343, 344, 644, 657
— <i>v.</i> Hargrave, 282	— <i>v.</i> Higginson, 1394
— <i>v.</i> Harley, 14	— <i>v.</i> Higgs, 553
— <i>v.</i> Harman, 632	— <i>v.</i> Higham, 411, 413, 417, 418, 423, 1128
— <i>v.</i> Harmwood, 328	— <i>v.</i> Highmore, 1135, 1151
— <i>v.</i> Harpur, 871, 873, 875, 1106, 1139, 1144, 1151	— <i>v.</i> Hilbers, 979, 980
— <i>v.</i> Harrington, 625	— <i>v.</i> Hill, 1121
— <i>v.</i> Harris, 166, 306, 392, 397, 743, 973, 1153	— <i>v.</i> Hillman, 14
— <i>v.</i> Harris and Minion, 819	— <i>v.</i> Hills, 655, 659
— <i>v.</i> Harrison, 1112, 1228	— <i>v.</i> Hilton, 272, 285
— <i>v.</i> Harriss, 962	— <i>v.</i> Hinchliff, 419
— <i>v.</i> Harrow-on-the-Hill, 169	— <i>v.</i> Hinckley Justices, 250
— <i>v.</i> Hart, 326	— <i>v.</i> Hinde, 1209
— <i>v.</i> Hartlepool Mayor, 1256, 1314	— <i>v.</i> Hitcham, 642
— <i>v.</i> Hartley, 1118	— <i>v.</i> Hockenhall, 166
— <i>v.</i> Hartpur, 645	— <i>v.</i> Hodges, 625
— <i>v.</i> Harwich Mayor, 1256	— <i>v.</i> Hodgson, 263, 635, 658
— <i>v.</i> Harwich Recorder, 219	— <i>v.</i> Hogan, 311, 678
— <i>v.</i> Harwood, 741	— <i>v.</i> Holborow, 422, 423
— <i>v.</i> Hassell, 658	— <i>v.</i> Holden, 617, 624, 625
— <i>v.</i> Hastings, 281	— <i>v.</i> Holland, 120, 166
— <i>v.</i> Hatfield Inhabitants, 901	— <i>v.</i> Hollingberry, 976, 987
— <i>v.</i> Hatfield Peverel Inhabitants, 621, 652	— <i>v.</i> Holloway, 168
— <i>v.</i> Hawdon, 610, n., 635, 657	— <i>v.</i> Holmes, 969
— <i>v.</i> Hawes, 454	— <i>v.</i> Hooper, 645
— <i>v.</i> Hawkes, 1154	— <i>v.</i> Hope Mansell Inhabitants, 1000
— <i>v.</i> Hawkins, 21, 862	— <i>v.</i> Horne, 1148
— <i>v.</i> Haworth Chapelwardens, 715	— <i>v.</i> Horne Tooke, 990
— <i>v.</i> Hayes, 163, 168	— <i>v.</i> Hornsea, 272
— <i>v.</i> Haynes, 472	— <i>v.</i> Hoseason, 876
— <i>v.</i> Hayward, 769, 1368, 1375	— <i>v.</i> Hoskins, 163
— <i>v.</i> Hazel, 168	— <i>v.</i> Houldgrave, 529, 773
— <i>v.</i> Hazell, 1113, 1135, 1147, 1151, 1159	— <i>v.</i> How, 638, 639
— <i>v.</i> Heane, 986	— <i>v.</i> Howarth, 287, 288, 298, 299, 963
— <i>v.</i> Hearn, 968	— <i>v.</i> Howell, 19, 21
	— <i>v.</i> Howes, 10, 676, 965, 970,
	— <i>v.</i> Hube, 618, 648, 1144, 1402

Reg. or Rex v. Hudson, 982	Reg. or Rex v. Kelly, 20
— v. Huggins, 1113, 1224, 1236, 1413	— v. Kelsey, 1319
— v. Hughes, 17, 28, 29, 410, 411, 550	— v. Kempson, 1150
— v. Hull Dock Company, 619	— v. Kendal, 847
— v. Hull Poor Governors, 776	— v. Kendal Inhabitants, 235
— v. Hulton, 1065	— v. Kenrick, 976, 977, 980, 991
— v. Hungerford, 563	— v. Kensington, 73
— v. Hunslet Overseers, 1283	— v. Kent, 1111, 1128, 1149
— v. Hunt, 57, 287, 299, 305, 626, 636, 645, 988, 1148	— v. Kent Inhabitants, 504, 507
— v. Hunter, 1320	— v. Kent Justices, 222, 226, 227, 229, 249, 638, 1234
— v. Huntingdon Justices, 230, 1161, 1163	— v. Kenyon, 647
— v. Huntingdonshire Justices, 230, 421	— v. Kerrison, 507, 534
— v. Huntley, 31, 116, 258, 260	— v. Kesteven Justices, 231, 232, 233, 241
— v. Huntsworth, 722	— v. Kettleworth, 653, 656
— v. Hurse, 809	— v. Kidderminster, 1256, 1260
— v. Hutchinson, 1409	— v. Kiddy, 1109, 1130, 1140
— v. Huxley, 325	— v. Kimbolton, 234, 253
— v. Hyams, 546	— v. Kimbolton Inhabitants, 231, 240, 254
— v. Hyde, 619, 1155, 1158	— v. King, 21, 621, 872, 983
— v. Hyman, 32	— v. Kingsley, 385, 475, 487
— v. Ingham, 394, 1213, 1223, 1225	— v. Kingston, 967, 972, 1395
— v. Ingledon, 655	— v. Kingston Duchess, 616, 625
— v. Ipswich Recorder, 219, 1280	— v. Kingston Justices, 220
— v. Isaacs, 805	— v. Kinnarsley, 980, 982
— v. Isle of Ely, 503	— v. Kipps, 10
— v. Ivens, 131	— v. Kirdford Inhabitants, 537
— v. Jackson, 18, 282, 326, 629, 630	— v. Kirkwood, 20
— v. Jacobs, 451, 962, 970	— v. Knapp, 127
— v. James, 294, 308, 630, 844, 854, 867, 876, 1119	— v. Knight and Roffey, 559
— v. Jarvis, 27, 32, 36, 282, 551, 554, 557, 809, 967, 1119, 1121, 1123, 1136, 1150	— v. Knill, 243
— v. Jefferies, 1158, 1159	— v. Knollys, 5
— v. Jeffery, 244	— v. Knowles, 2, 167
— v. Jeffries, 1146, 1148, 1153	— v. Knox, 721
— v. Jeffs, 624	— v. Kroche, 991
— v. Jenkins, 558, 660, 973	— v. Lacy, 43
— v. Jenks, 562	— v. Lamb, 962
— v. Jewell, 636, 658	— v. Lambeth, 237, 256
— v. Jeyes, 1319, 1321	— v. Lancashire, 106, 222, 223, 224, 227, 230, 232, 237, 238, 240, 241, 255, 506, 508, 533, 638, 895, 1032, 1304
— v. Joblin, 554	— v. Lancashire and Preston Junction Railway, 627
— v. John, 972	— v. Lancaster, 1306
— v. Johnson, 6, 20, 344, 547, 548, 562, 660, 677, 873, 984, 1112, 1126, 1127, 1149, 1158, 1159, 1162, 1275, 1304, 1319, 1321	— v. Lancaster and Preston Junction, 619
— v. Jones, 4, 46, 282, 349, 370, 394, 395, 452, 556, 634, 641, 649, 690, 967, 974, 984, 1321, 1375	— v. Lands, 395
— v. Jordan, 20, 405, 559, 675, 677	— v. Lane, 1007
— v. Josephs, 625	— v. Langher, 966
— v. Joule, 625, 634	— v. Langhorn, 1275
— v. Judd, 370, 852	— v. Langley, 667
— v. Jukes, 597, 598, 618, 632, 652, 1117, 1120, 1121, 1122, 1123, 1160	— v. Langridge, 73
— v. Kaye, 631	— v. Larkin, 165, 269, 270
— v. Kea, 406, 407	— v. Larrieu, 667
— v. Kelk, 225	— v. Latchford Inhabitants, 641, 660
— v. Kellett, 1150	— v. Lavey and Parker, 806
	— v. Lawrence, 547, 549
	— v. Layton, 1142
	— v. Lea, 355
	— v. Lears, 1149
	— v. Leatham, 964, 973
	— v. Lechmere, 1202
	— v. Lediard, 621

Reg. or Rex <i>v.</i> Lcc, 27, 281	Reg. or Rex <i>v.</i> Macdaniel, 979
— <i>v.</i> Leeds Justices, 221, 256	— <i>v.</i> M'Evin, 18
— <i>v.</i> Leeds Mayor, 1278	— <i>v.</i> Machen, 413, 414, 418
— <i>v.</i> Leeds Recorder, 233, 259, 422	— <i>v.</i> M'Hugh, 965
— <i>v.</i> Leefe, 1148	— <i>v.</i> Machynlleth, 532, 533, 536, 538
— <i>v.</i> Lees, 617	— <i>v.</i> Mackarty, 472
— <i>v.</i> Leicester, Freeman of, 250	— <i>v.</i> M'Makin, 21
— <i>v.</i> Leicester Justices, 238, 1030	— <i>v.</i> Macnamara, 648
— <i>v.</i> Leicester and Compton Justices, 721	— <i>v.</i> M'Pherson, 343, 349
— <i>v.</i> Leicestershire Justices, 163, 238, 246, 422	— <i>v.</i> Madge, 156
— <i>v.</i> Leigh, 651	— <i>v.</i> Mahon, 315
— <i>v.</i> Lennard, 815	— <i>v.</i> Maidstone, 404, 405
— <i>v.</i> Leominster Inhabitants, 230	— <i>v.</i> Mainwaring, 253, 1106
— <i>v.</i> Lesley, 43, 156	— <i>v.</i> Major, 655
— <i>v.</i> Levi, 397	— <i>v.</i> Mallinson, 1118, 1127
— <i>v.</i> Lewis, 43, 156, 166, 271, 419, 546, 623, 871, 873, 1153	— <i>v.</i> Manchester Justices, 1032
— <i>v.</i> Liberty of Safron Hill, 250	— <i>v.</i> Manchester and Leeds Railway Company, 619, 622, 627, 634, 643
— <i>v.</i> Lichfield, 1279	— <i>v.</i> Manchester Mayor, 236, 636
— <i>v.</i> Lichfield Mayor, 1251, 1253, 1259	— <i>v.</i> Mankletow, 10
— <i>v.</i> Light, 60, 287, 295, 308, 309	— <i>v.</i> Manley, 17
— <i>v.</i> Lightfoot, 410, 412, 423	— <i>v.</i> Manning, 154, 156
— <i>v.</i> Lincoln Mayor, &c., 514	— <i>v.</i> Mansfield, 1123
— <i>v.</i> Lincolnshire Justices, 229, 236, 240, 421	— <i>v.</i> Mansfield Inhabitants, 404
— <i>v.</i> Lindsey Justices, 254, 621	— <i>v.</i> Manwaring, 454
— <i>v.</i> Lindsey, Lincolnshire, 508	— <i>v.</i> March, 310
— <i>v.</i> Lingate, 965, 972	— <i>v.</i> Margette, 556
— <i>v.</i> Lisle, 1002	— <i>v.</i> Marks, 370, 373, 853, 854
— <i>v.</i> Liston, 652, 1143	— <i>v.</i> Mark Terrel, 620
— <i>v.</i> Lithgo, 552, n.	— <i>v.</i> Marriott, 1121
— <i>v.</i> Little, 1117, 1133, 1149, 1151	— <i>v.</i> Marsden, 287
— <i>v.</i> Liverpool Inhabitants, 170	— <i>v.</i> Marsh, 166, 344, 894, 1120, 1123, 1150
— <i>v.</i> Liverpool Mayor, 219	— <i>v.</i> Marshall, 1124
— <i>v.</i> Liverpool Recorder, 232, 233, 250, 259	— <i>v.</i> Martin, 269, 271, 310, 342, 410, 417, 550, 677, 678
— <i>v.</i> Llanbcbllig Inhabitants, 631	— <i>v.</i> Martyn, 810
— <i>v.</i> Llangenny Inhabitants, 171	— <i>v.</i> Martyr, 1126, 1130
— <i>v.</i> Llewellyn, 1117	— <i>v.</i> Mashiter, 998
— <i>v.</i> Lloyd, 323, 621, 769, 970, 1150	— <i>v.</i> Mason, 627
— <i>v.</i> Lockett, 19	— <i>v.</i> Massey, 371, 392, 394, 395
— <i>v.</i> Lockhart, 973	— <i>v.</i> Masters, 268, 271
— <i>v.</i> Lockyer, 991	— <i>v.</i> Matters, 1122
— <i>v.</i> Lolley, 452	— <i>v.</i> Matthews, 1109, 1143, 1148
— <i>v.</i> London Inhabitants, 618	— <i>v.</i> Maude, 566
— <i>v.</i> London Justices, 222, 254	— <i>v.</i> Maulden, 418, 1153
— <i>v.</i> Lone, 1007	— <i>v.</i> Mawbey, 979, 982
— <i>v.</i> Long, 619, 969, 1299, 1331	— <i>v.</i> May, 770
— <i>v.</i> Lopez, 43, 49, 156	— <i>v.</i> Mead, 624
— <i>v.</i> Lord, 370, 648, 651, 1108	— <i>v.</i> Meadows, 10
— <i>v.</i> Lovet, 1111	— <i>v.</i> Mears, 978
— <i>v.</i> Lovett, 1109, 1143, 1150	— <i>v.</i> Mellor, 269, 872
— <i>v.</i> Luckhurst, 966	— <i>v.</i> Menham, 46
— <i>v.</i> Luellin, 64, 131	— <i>v.</i> Merceron, 971
— <i>v.</i> Luffe, 403, 404, 405, 406	— <i>v.</i> Meredith, 310
— <i>v.</i> Lundie, 940	— <i>v.</i> Merioneth, 260
— <i>v.</i> Lynn, 467	— <i>v.</i> Merionethshire, 538
— <i>v.</i> Lyon, 379	— <i>v.</i> Mersey Navigation Company, 713
— <i>v.</i> Lyons, 550	— <i>v.</i> Messingham, 32, 33
— <i>v.</i> Macarthy, 980	— <i>v.</i> Meyer and Albert, 607, n.
— <i>v.</i> M'Cartie, 370	— <i>v.</i> Meynell, 973
— <i>v.</i> Mac Cartie, 369	— <i>v.</i> Michael, 176
— <i>v.</i> Macclesfield, 239	— <i>v.</i> Middlehurst, 111
	— <i>v.</i> Middleton Nuisances Committee, 219

Reg. or Rex <i>v.</i> Middlesex, 223, 618	Reg. or Rex <i>v.</i> Nockolds, 224, 914
— <i>v.</i> Middlesex, Archdeacon, 743	— <i>v.</i> Norbury Inhabitants, 634
— <i>v.</i> Middlesex Justices, 114, 221, 222, 224, 230, 231, 235, 351, 354, 358, 412, 421, 621, 631, 895, 913	— <i>v.</i> Norfolk, 239
— <i>v.</i> Midlam, 1161, 1164	— <i>v.</i> Norfolk Justices, 255, 257
— <i>v.</i> Midland Railway Company, 1228	— <i>v.</i> North, 644, 871, 1116, 1160
— <i>v.</i> Mile End, 340	— <i>v.</i> Northampton Inhabitants, 535
— <i>v.</i> Miles, 310	— <i>v.</i> Northampton Justices, 241, 247, 360
— <i>v.</i> Millard, 809, 1110	— <i>v.</i> Northamptonshire, 501
— <i>v.</i> Milner, 390, 417	— <i>v.</i> Northleach and Witney Roads, 106
— <i>v.</i> Milnrow, Chapelwardens of, 721	— <i>v.</i> North Riding of Yorkshire Jus- tices, 421
— <i>v.</i> Milton, 313, 314, 713	— <i>v.</i> Norton, 325, 561
— <i>v.</i> Minshull, 106, 1136, 1137	— <i>v.</i> Norwich, 537
— <i>v.</i> Mirehouse, 1107	— <i>v.</i> Norwich City, Inhabitants, 534, 538
— <i>v.</i> Mitchell, 391, 1225	— <i>v.</i> Norwich Mayor, 1256
— <i>v.</i> Moah, 348	— <i>v.</i> Nott, 168
— <i>v.</i> Moate, 359, 658	— <i>v.</i> Nottingham Justices, 119, 1374
— <i>v.</i> Monmouth Justices, 249	— <i>v.</i> Nunn, 421, 640
— <i>v.</i> Monmouthshire Justices, 244, 246, 251	— <i>v.</i> Nunneley, 722
— <i>v.</i> Monteth, 325	— <i>v.</i> Nute, 973
— <i>v.</i> Montgomeryshire Justices, 238, 239	— <i>v.</i> Odgers, 1386
— <i>v.</i> Moore, 282, 966, 969, 1117	— <i>v.</i> Old Malton, 532
— <i>v.</i> Moreley, 618	— <i>v.</i> Oliver, 316
— <i>v.</i> Morgan, 611, n., 625	— <i>v.</i> Orgill, 451
— <i>v.</i> Morice, 630, 643	— <i>v.</i> Osborne, 658
— <i>v.</i> Morris, 358	— <i>v.</i> Osmer, 314, 329
— <i>v.</i> Mortlock, 257, 258	— <i>v.</i> Ossett, 767
— <i>v.</i> Morton, 625	— <i>v.</i> Oswestry, 509, 534, 1321
— <i>v.</i> Mosley, 998, 1007	— <i>v.</i> Oulsley, 625
— <i>v.</i> Mott, 978	— <i>v.</i> Oundle, 240
— <i>v.</i> Mullins, 282	— <i>v.</i> Oundle Inhabitants, 247
— <i>v.</i> Murphy, 21, 980, 987	— <i>v.</i> Ouns, 553, n.
— <i>v.</i> Murray, 550	— <i>v.</i> Owen, 18, 29, 674, 768, 963
— <i>v.</i> Murtagh, 964	— <i>v.</i> Oxford, 538
— <i>v.</i> Musson, 43, 843	— <i>v.</i> Oxfordshire, 502, 506, 514, 533, 535, 536, 629
— <i>v.</i> Myers, 882	— <i>v.</i> Oxfordshire Justices, 219, 223, 231, 233, 237, 240, 1234
— <i>v.</i> Myott, 410, 414	— <i>v.</i> Oxley, 418, 419
— <i>v.</i> Napper, 561	— <i>v.</i> Padwick, 253
— <i>v.</i> Nash, 853	— <i>v.</i> Page, 23, 391, 808, 809, 820
— <i>v.</i> Natland, 247	— <i>v.</i> Pain, 871, 1115, 1116, 1147
— <i>v.</i> Neal, 282	— <i>v.</i> Paine, 548, 1319
— <i>v.</i> Neale, 678, 765	— <i>v.</i> Palmer, 17, 617, 624, 629, 650, 713
— <i>v.</i> Nehuff, 636	— <i>v.</i> Parker, 966, 969, 982, 1213, 1231, 1236
— <i>v.</i> Neild, 1159	— <i>v.</i> Parkin, 168
— <i>v.</i> Netherthong, 535	— <i>v.</i> Parratt, 968
— <i>v.</i> Neville, 165, 652, 869, 1135, 1136, 1165	— <i>v.</i> Parry, 348, 355, 357
— <i>v.</i> Newbury, 243	— <i>v.</i> Parsons, 977, 980, 987
— <i>v.</i> Newcastle-upon-Tyne Justices, 233	— <i>v.</i> Passey, 19
— <i>v.</i> Newman, 265, 283	— <i>v.</i> Passman, 657, 659
— <i>v.</i> New Sarum, 504	— <i>v.</i> Patchet, 1148
— <i>v.</i> Newton, 456, 854, 1108	— <i>v.</i> Patterson, 1373
— <i>v.</i> Newton Ferrers, 640, 1114	— <i>v.</i> Payn, 1221
— <i>v.</i> New Windsor Mayor, 1259	— <i>v.</i> Payne, 879, 1156
— <i>v.</i> Nicolls, 980, 987	— <i>v.</i> Pearce, 169
— <i>v.</i> Nicholl, 310	— <i>v.</i> Pearce, 1150
— <i>v.</i> Nichols, 630	— <i>v.</i> Pearcey, 413, 417, 423
— <i>v.</i> Nicholas, 1225	— <i>v.</i> Pearson, 562
— <i>v.</i> Nield, 1123	— <i>v.</i> Peck, 983

Reg. or Rex *v.* Peckham, 1236
 — *v.* Peel, 47, 48
 — *v.* Peirson, 1395
 — *v.* Pembrokehire Justices, 226
 — *v.* Pennegoes, 629
 — *v.* Penprase, 624, 650
 — *v.* Pereira, 1115
 — *v.* Perkin, 1210, 1212
 — *v.* Perkins, 18, 21, 29, 31, 168,
 272, 629
 — *v.* Perry, 9, 740
 — *v.* Peterborough, 227
 — *v.* Peterborough Justices, 240, 241
 — *v.* Peters, 573
 — *v.* Pettit, 971
 — *v.* Pewterus, 167
 — *v.* Peyton, 556
 — *v.* Phelps, 295, 299, 304, 1017,
 1386
 — *v.* Phillips, 328, 343, 347, 667,
 675
 — *v.* Phillpott, 678
 — *v.* Philpoe, 326
 — *v.* Philpott, 311
 — *v.* Pickford, 409
 — *v.* Picton, 1127, 1149, 1157
 — *v.* Pierce, 857
 — *v.* Pilkington, 409, 420
 — *v.* Pinney, 59, 737
 — *v.* Platt, 350
 — *v.* Plumer, 21
 — *v.* Plummer, 1216
 — *v.* Plympton, 342, 498
 — *v.* Polfield, 1224
 — *v.* Pollman, 342, 979, 989
 — *v.* Polly, 552
 — *v.* Pomeroy, 973
 — *v.* Poor Law Commissioners, 660
 — *v.* Popplewell, 1117, 1124
 — *v.* Porter, 311, 1064
 — *v.* Potter, 642
 — *v.* Pountney, 966, 968
 — *v.* Povey, 456
 — *v.* Powell, 562, 973
 — *v.* Poynder, 737
 — *v.* Pratt, 249
 — *v.* Pratten, 129, 1136
 — *v.* Prest, 776
 — *v.* Preston, 1290
 — *v.* Price, 97, n., 163, 1112
 — *v.* Priest, 1155, 1158
 — *v.* Primelt, 10
 — *v.* Pritchard, 165, 166, 270, 284
 — *v.* Privy Council, 716
 — *v.* Probert, 637, 985
 — *v.* Prosser, 556
 — *v.* Puckering, 31
 — *v.* Pullen, 1113
 — *v.* Punshon, 395
 — *v.* Purchase, 1384, 1386
 — *v.* Purdey, 220, 243, 258
 — *v.* Pym, 36
 — *v.* Quende, 1219
 — *v.* Rabbitts, 1123
 — *v.* Radcliffe, 282
 — *v.* Radnorshire Justices, 1121

Reg. or Rex *v.* Rant, 359
 — *v.* Rattislaw, 639
 — *v.* Ravenstone, 413
 — *v.* Rawlings, 551
 — *v.* Rawlins, 85, 87, 555, 1109, 1110
 — *v.* Rawlinson, 1144
 — *v.* Rawson, 1319
 — *v.* Read, 310, 418
 — *v.* Reader, 651
 — *v.* Reading, 406
 — *v.* Reason, 651, 1142, 1152, 1164
 — *v.* Redfearne, 252
 — *v.* Reed, 962
 — *v.* Rees, 555, 1320
 — *v.* Reid, 325
 — *v.* Remnant, 871
 — *v.* Renshaw, 624, 678
 — *v.* Revel, 844
 — *v.* Reynell, Clerk, 689
 — *v.* Rhodes, 875
 — *v.* Riall, 628
 — *v.* Rice, 667, 744, 1396
 — *v.* Richards, 172, 561, 965, 967,
 1162, 1319
 — *v.* Richardson, 645
 — *v.* Richmond, 815
 — *v.* Richmond Recorder, 241, 250
 — *v.* Ricketts, 288
 — *v.* Ricketts, 302
 — *v.* Ridgely, 815
 — *v.* Ridgway, 247, 252, 1119, 1142,
 1159, 1164
 — *v.* Ridley, 311
 — *v.* Ridpath, 375, 378
 — *v.* Ring, 340
 — *v.* Ripon Mayor, &c., 744
 — *v.* Ripton Justices, 1283
 — *v.* Rispal, 981, 985
 — *v.* Robb, 10
 — *v.* Roberts, 342, 549, 706, 709,
 815, 979, 988, 1124, 1146
 — *v.* Robey, 1319
 — *v.* Robins, 10, 11
 — *v.* Robinson, 319, 351, 392, 394,
 395, 397, 547, 810, 811, 964,
 965, 978, 1164, 1224
 — *v.* Robinson and Fuller, 810
 — *v.* Robson, 1108
 — *v.* Rochester Mayor, 1257
 — *v.* Roderick, 342
 — *v.* Rodgers, 618, 810
 — *v.* Roebuck, 343
 — *v.* Rogers, 667, 810, 871, 875, 879,
 880
 — *v.* Rogier, 1394
 — *v.* Rose, 417, 424, 639
 — *v.* Rosier, 965
 — *v.* Rosinski, 310
 — *v.* Rotherham Inhabitants, 622
 — *v.* Roupel, 629
 — *v.* Routledge, 345, 1002
 — *v.* Rowe, 969
 — *v.* Rowlands, 978, 982, 987
 — *v.* Royce, 22
 — *v.* Rundle, 310, 311
 — *v.* Rushworth, 623, 653

Reg. or Rex *v.* Russell, 13, 547
 — *v.* Rust, 549
 — *v.* Ruyton Inhabitants, 171
 — *v.* Ryland, 269
 — *v.* Rymes, 165
 — *v.* Sadi, 81
 — *v.* Sadler, 871, 1116, 1117
 — *v.* Sainsbury, 99, 121
 — *v.* St. Albans, 225
 — *v.* St. Albans' Justices, 236, 618, 621
 — *v.* St. Anne's Rector, 762
 — *v.* St. Ann's, Soho, 762
 — *v.* St. Bride's, 405
 — *v.* St. Clement's Inhabitants, 707, 723, 744
 — *v.* St. Edmund's, Sarum, 1299
 — *v.* St. George, 308, 701
 — *v.* St. George's, Bloomsbury, 1113
 — *v.* St. Giles, Cambridge, 533
 — *v.* St. Giles-in-the-Fields, 451
 — *v.* Sainthill, 533
 — *v.* St. James', Colchester, Inhabitants, 639
 — *v.* St. Lawrence, Ludlow, 1299
 — *v.* St. Margaret's Churchwardens, 708
 — *v.* St. Margaret's, Leicester, 708, 709
 — *v.* St. Margaret's, Westminster, Churchwardens, 705
 — *v.* St. Mary in Bury St. Edmonds, 893, n.
 — *v.* St. Mary, Lambeth, Churchwardens, 705, 727, 730
 — *v.* St. Mary, Lambeth, 741, 742
 — *v.* St. Mary, Nottingham, 413, 1145
 — *v.* St. Mary, Whitechapel, 631, 639
 — *v.* St. Maurice, 1112, 1124
 — *v.* St. Michael's, Pembroke, 726
 — *v.* St. Michael's, Pembroke, Churchwardens, 728
 — *v.* St. Michael's, Southampton, 728
 — *v.* St. Nicholas' Inhabitants, 1153
 — *v.* St. Nicholas, Leicester, 418
 — *v.* St. Nicholas, Leicester, Inhabitants, 1146
 — *v.* St. Olave's Inhabitants, 642
 — *v.* St. Paul's, Covent Garden, Inhabitants, 1157
 — *v.* St. Peter's, 219, 406
 — *v.* St. Peter's, Sudbury, Burial Board, 573
 — *v.* St. Peter's, Thetford, Churchwardens, 705, 708
 — *v.* St. Peter's, York, 511
 — *v.* St. Saviour's, Southwark, 708
 — *v.* St. Stephens, Vicar, &c., 700, 701
 — *v.* Salford Overseers, 73, 621, 652
 — *v.* Salomons, 1109, 1153, 1154, 1156
 — *v.* Salop, 501, 503

Reg. or Rex *v.* Salop Justices, 225, 230, 233, 256, 259, 421, 721, 1139, 1298
 — *v.* Saloway, 1228
 — *v.* Salter, 374, 650, 975, 988
 — *v.* Sanders, 1056
 — *v.* Sandys, 963
 — *v.* Sansome, 962
 — *v.* Sattler, 43, 156
 — *v.* Saunders, 25, 328, 374, 620, 622, 1018, 1231, 1342, 1375
 — *v.* Saville, 1032
 — *v.* Scaife, 364, 623, 648, 650
 — *v.* Scory, 1236
 — *v.* Scott, 32, 395, 468, 963, 964, 980, 1109, 1117, 1143
 — *v.* Scotton, 1110
 — *v.* Seale, 1155
 — *v.* Seaton, 1320
 — *v.* Sedley, 1394
 — *v.* Sefton, 557
 — *v.* Selway, 1123
 — *v.* Senior, 127
 — *v.* Serjeant, 977, 991
 — *v.* Serva, 46, 1386
 — *v.* Seton, 630
 — *v.* Seton Inhabitants, 644, 648
 — *v.* Sevenoaks, 227
 — *v.* Sevenoaks Inhabitants, 639
 — *v.* Seward, 978, 980, 981, 1119
 — *v.* Shakespeare, 2, 3, 6
 — *v.* Shape, 44
 — *v.* Share, 1259, 1266
 — *v.* Sharpe, 467, 1409
 — *v.* Sharpness, 656
 — *v.* Shaw, 127, 373, 970
 — *v.* Shebbeare, 374
 — *v.* Sheen, 347, 352, 353, 354, 355
 — *v.* Sheering, 1319
 — *v.* Sheffield, Ashton-under-Lyne, &c., Railway Company, 627
 — *v.* Shellard, 989
 — *v.* Shelring, 1375
 — *v.* Shepherd, 744
 — *v.* Sheppard, 967, 969
 — *v.* Sherlock, 1017
 — *v.* Sherman, 2, 6
 — *v.* Sherrington, 973
 — *v.* Sherwin, 326
 — *v.* Shipperbottom, 411, 414, 417, 423
 — *v.* Shrewsbury and Hereford Railway Company, 259
 — *v.* Shrewsbury Justices, 638, 640, 723
 — *v.* Shrewsbury Recorder, 221
 — *v.* Shropshire Justices, 222, 231, 412
 — *v.* Shuttleworth, 285
 — *v.* Sillifant, 716, 721
 — *v.* Simmons, 410
 — *v.* Simons, 972
 — *v.* Simpson, 325, 735, 744, 967, 1113, 1128, 1129, 1132, 1141, 1147

Reg. or Rex *v. Skeen*, 396, 965
 — *v. Skellington*, 632
 — *v. Skerritt*, 810
 — *v. Skin*, 416
 — *v. Skircoat*, 227, 238, 254
 — *v. Slawstone*, 231
 — *v. Sleeman*, 966, 969, 971
 — *v. Sloggett*, 396, 965
 — *v. Smith*, 172, 220, 258, 271, 272,
 311, 354, 419, 546, 547, 549,
 550, 551, 559, 764, 851, 963,
 975, 1111, 1121, 1126, 1134,
 1142, 1144, 1149, 1151, 1152,
 1155
 — *v. Smyth*, 554
 — *v. Smythies*, 453
 — *v. Snape*, 1139
 — *v. Soares*, 20
 — *v. Solly*, 638
 — *v. Solway*, 1141
 — *v. Somerset Inhabitants*, 507
 — *v. Somersetshire Justices*, 619,
 622
 — *v. Soper*, 1142
 — *v. Sordoff*, 872
 — *v. Southampton*, 227, 508, 533
 — *v. Southampton Dock Company*,
 661
 — *v. Southampton Inhabitants*, 502
 — *v. Southern*, 1144
 — *v. Southerton*, 121
 — *v. South Holland Drainage Com-*
 pany, 628
 — *v. South Weal Overseers*, 575
 — *v. Sourton*, 406, 407
 — *v. Sparrow*, 316, 631, 648, 980
 — *v. Spackman*, 274, n., 638
 — *v. Sparling*, 1117, 1124
 — *v. Speed*, 1119
 — *v. Spencer*, 379, 634, 641, 966,
 1183
 — *v. Spilsbury*, 972
 — *v. Spragg*, 645, 982, 987
 — *v. Spratley*, 1314
 — *v. Sprigge*, 546
 — *v. Spriggs*, 546, 549
 — *v. Stafford Inhabitants*, 234, 258
 — *v. Stafford Justices*, 1126, 1130
 — *v. Staffordshire Justices*, 220, 226,
 229, 232, 249, 258, 723,
 1374
 — *v. Stamper*, 256, 422
 — *v. Standard Hill*, 1007
 — *v. Stannard*, 634, 1393
 — *v. Stanton*, 316, 328, 357
 — *v. Steel*, 990
 — *v. Stevens*, 740
 — *v. Steventon*, 1128
 — *v. Stewart*, 17, 20, 690, 691,
 810
 — *v. Still*, 611, 620
 — *v. Stimpson*, 1138
 — *v. Stringer*, 325, 326
 — *v. Stock*, 219, 551, 683
 — *v. Stockdale*, 1224
 — *v. Stockton*, 555

Reg. or Rex *v. Stoddart*, 410
 — *v. Stogursey*, 763, 767
 — *v. Stoke Bliss*, 240, 418
 — *v. Stoke Bliss Inhabitants*, 257
 — *v. Stone*, 975, 990, 1126, 1134,
 1141, 1149, 1151
 — *v. Stoughton*, 1146
 — *v. Stowell*, 607, n.
 — *v. Stratford-upon-Avon*, 537
 — *v. Stripp*, 962
 — *v. Stubbs*, 269, 281, 994
 — *v. Stukeley*, 1228, 1236
 — *v. Sturge*, 165
 — *v. Sudbury*, 980
 — *v. Suffolk*, 227
 — *v. Suffolk Justices*, 222, 229, 235,
 245, 638, 639
 — *v. Summers*, 658
 — *v. Surrey*, 227, 535
 — *v. Surrey Justices*, 92, n., 97, n.,
 117, 219, 221, 230, 239, 241,
 255, 421
 — *v. Surrey Treasurer*, 1321
 — *v. Sussex*, 631, 638
 — *v. Sussex Justices*, 222, 223, 227,
 228, 231, 238, 241, 251
 — *v. Sutton*, 342, 510, 814
 — *v. Swallow*, 1109, 1143, 1150
 — *v. Sweeting*, 10
 — *v. Swindall*, 18, 22
 — *v. Swinnerton*, 973
 — *v. Symonds*, 1156
 — *v. Sylvester*, 114
 — *v. Tamworth Mayor*, 1279
 — *v. Tandy*, 810
 — *v. Tannant*, 978
 — *v. Tanner*, 279, 984
 — *v. Taunton*, 1019
 — *v. Taunton Churchwardens*, 744
 — *v. Taunton St. Mary*, 653
 — *v. Taylor*, 287, 347, 353, 354, 355,
 357, 690, 854, 881, 966, 1151,
 1217, 1386
 — *v. Teal*, 658, 659, 987
 — *v. Temple*, 119
 — *v. Templeman*, 961
 — *v. Tenant*, 423
 — *v. Thackwell*, 223, 228
 — *v. Theed*, 1150
 — *v. Thomas*, 32, 271, 325, 413, 623,
 645, 967, 969, 970
 — *v. Thompkins*, 655
 — *v. Thompson*, 30, 31, 550, 966,
 1071, 1132, 1147, 1150, 1153
 — *v. Thornhill*, 975
 — *v. Thornton*, 658, 969, 971
 — *v. Thwaites*, 1261, 1314
 — *v. Timmins*, 11
 — *v. Timothy*, 979
 — *v. Tinkler*, 11
 — *v. Tod*, 1108
 — *v. Tolley*, 1106
 — *v. Tooke*, 354
 — *v. Tooley*, 60
 — *v. Topping*, 452
 — *v. Totness*, 1112, 1113

Reg. or Rex v. Tott, 81	Reg. or Rex v. Warwickshire Justices, 214, 219,
— v. Tower Hamlets Commissioners, 628	222, 238
— v. Towle, 22	— v. Washaner, 1385
— v. Townrow, 1193, n.	— v. Washbrook, 893, n.
— v. Townsend, 899, 900	— v. Waters, 678, 1320
— v. Trafford, 227	— v. Watkins, 562
— v. Trapshaw, 1251	— v. Watkinson, 994
— v. Trebilcock, 269	— v. Watson, 510, 975
— v. Trelawney, 1117, 1118	— v. Watton, 660
— v. Tremearne, 659	— v. Watts, 228, 230
— v. Trew, 472	— v. Wavell, 621
— v. Truster, 326	— v. Weale, 1114
— v. Tryddyn, 1386	— v. Webb, 269, 282, 963
— v. Tubby, 963	— v. Webster, 165, 270
— v. Tucker, 225	— v. Wedge, 678
— v. Turk, 642, 646	— v. Weeks, 36, 816
— v. Turner, 35, 222, 379, 551, 553, 557, 616, 657, 806, 974, 978, 1185, 1151	— v. Weir, 1018
— v. Turnock, 222	— v. Welch, 353, 808
— v. Tutchin, 163	— v. Wells, 232, 625
— v. Twiselton, 10	— v. Wenmouth, 548
— v. Twyford, 844	— v. West, 1225
— v. Tyler, 17, 21, 22	— v. Westby, 3
— v. Tyrwhitt, 1105	— v. Western, 164
— v. Unwin, 629	— v. Westley, 165, 398, 1122, 1159
— v. Upchurch, 966	— v. Westmoreland, 1353
— v. Upton, 456	— v. Westmoreland Justices, 232, 235
— v. Uske Inhabitants, 244	— v. West Riding Justices, 239, 240, 241, 249, 622, 639
— v. Uttoxeter Inhabitants, 621	— v. West Riding of Yorkshire, 227, 235, 502, 513
— v. Valler, 17	— v. West Riding of Yorkshire Justices, 221, 229, 261
— v. Van Boven, 1130	— v. Westwood, 553, n.
— v. Vann, 467, 692	— v. Wetherell, 336, 616, 625
— v. Vasey, 1114	— v. Wettenhall, 368
— v. Vaughan, 342, 498, 975	— v. Whalley, 1222
— v. Venables, 1126	— v. Wheatmain, 1125
— v. Verrier, 168	— v. Wheatman, 1117, 1121
— v. Vincent, 165, 1064	— v. Wheaton, 964
— v. Vipont, 1141, 1149, 1153, 1154	— v. Wheeldon, 546, 548
— v. Waddington, 561, 1404	— v. Wheeley, 963
— v. Wadley, 1402	— v. Whiley, 453, 809
— v. Waghorn, 74	— v. White, 231, 643, 973, 1231
— v. Wakefield, 9, 648, 1228, 1236	— v. Whitechapel, 635
— v. Walcot, 163	— v. Whitehead, 556, 990
— v. Walcot Parish Overseers, 572, 580	— v. Whitelock, 876
— v. Waldegrave, Earl of, 654	— v. Whitney, 502
— v. Walkden, 310	— v. Whittingham Overseers, 73
— v. Walkeley, 967	— v. Whittles, 417
— v. Walker, 32, 60, 287, 300, 316, 352, 353, 357, 1224, 1386	— v. Wigan Justices, 634
— v. Wallace, 29, 32, 35, 45, 613, n.	— v. Wild, 673
— v. Wallis, 22	— v. Wildey, 352
— v. Walsall Justices, 117	— v. Wilford, 555
— v. Walsh, 1118, 1160	— v. Wilkes, 166, 282, 294, 628, 637, 852, 853
— v. Walters, 391, 876	— v. Wilkins, 310
— v. Walton, 326	— v. Wilkinson, 962
— v. Warmminster, Inhabitants, 643	— v. Willats, 632
— v. Warnford, 163	— v. Willett, 340, 667
— v. Warren, 763, 765	— v. Williams, 17, 119, 342, 375, 556, 654, 724, 743, 773, 810, 1160, 1342, 1375, 1396
— v. Warrington, 966	— v. Williamson, 654, 1007
— v. Wartnaby, 625	— v. Willins, 729
— v. Warwick, 622, 1396	— v. Willis, 975, 1110
— v. Warwick Mayor, 1279	
— v. Warwick Justices, 1234	

- Reg. or Rex *v.* Wilson, 14, 416, 419, 551, 557,
626, 654, 705, 714, 1126,
1151
— *v.* Wilts Justices, 227, 251, 638,
640, 913, 1370
— *v.* Wiltshire, 418
— *v.* Wiltshire Justices, 230, 238,
253, 410, 419, 895, n.
— *v.* Winchester, Bishop of, Com-
missary, 742
— *v.* Windsor, 966, 1122
— *v.* Windsor, Mayor, 1251
— *v.* Winsor, 348
— *v.* Winster, 418
— *v.* Winster Inhabitants, 646
— *v.* Wistow Inhabitants, 247
— *v.* Withal and Overend, 563
— *v.* Witherneck Inhabitants, 234
— *v.* Witt, 554
— *v.* Wix, 742
— *v.* Wood, 618, 651, 1397
— *v.* Woodcock, 1152
— *v.* Woollats, 622
— *v.* Worcester Justices, 219, 236
— *v.* Wordley, 618
— *v.* Worthenbury Inhabitants, 1157
— *v.* Wright, 21, 166, 900
— *v.* Wrottesley, 721, 1138
— *v.* Wyatt, 867, 1155
— *v.* Wymondham, 409
— *v.* Wyndham, 370
— *v.* Yates, 1320
— *v.* Yarpole, 244
— *v.* Yeadon, 168, 316
— *v.* Yore, 8, 9
— *v.* York, 871
— *v.* York, Mayor, 1306
— *v.* Yorkshire, 618, 623
— *v.* Yorkshire Justices, 219, 239,
249, 251, 618, 619, 621, 622,
623, 627
— *v.* Yorkshire, West Riding, 534,
535, 1369
— *v.* Yorkshire, West Riding Jus-
tices, 770
— *v.* Young, 18, 21, 96, 117, 118
Reid's case, 328
Reynolds, *re*, 872
— *v.* Monkton, 694, 699, 734, 749
Ricardo *v.* Maidenhead Local Board of Health,
220
Rice, *ex parte*, *v.* Jones, 1128
Rich *v.* Bushnell, clerk, 702
Richards *v.* Birley, 717
— *v.* Dyke, 722
Richardson *v.* Gladwin, 709
Roberts *v.* Aulton, 698, 766
— *v.* Orchard, 296, 301
— *v.* Roberts, 979
Robinson's case, 1411
— *re*, 364
— Marks, 412
Robson *v.* Spearman, 878
Rodgers *v.* Brooks, 695
Rogers *v.* Davenant, 705, 743
— *v.* Jones, 875
Rowcliffe *v.* Murray, 1028
Rowe *v.* Hawkins, 312
Rowland *v.* Ashby, 962
Rudd's case, 280, 370
Rupen *v.* Lucas, 302
Russell *v.* Men of Devon, 531
Rutland, Countess of, case, 5
Ruttinger *v.* Temple, 408
Rutter *v.* Chapman, 1254
Ryan *v.* Shilcock, 547
Ryder *v.* Malbon, 165
- S.
- St. Cauford Parish *v.* Poole, 714
St. Columb, *re* Pews of, 693, 694, 695, 696
St. Faith, Churchwardens, *re*, 741
St. George and St. Margaret, 405
St. James, Westminster, *v.* St. Mary, Battersea,
267
St. John's, Margate, Churchwardens *v.* St.
John's, Margate, Parishioners, 700
St. John's, Walbrook, Churchwardens *v.* the
Parishioners, 688
St. Saviour's, Southwark, case, 742
St. Thomas' Hospital Governors, 738
St. Thomas' Hospital *v.* Treherne, 735, 750,
751
Salop Coroner, *re*, 1201, 1203
Samuel *v.* Payne, 293, 295
Sanchar's case, 28, 30, 34
Sander's case 1112, 1126
— *v.* Sheil, 649
Sandiman *v.* Breach, 601
Sandon *v.* Jervis, 302
Sarch *v.* Blackburn, 1412
Saville *v.* Roberts, 977, 981
Saye and Sele Peerage, 403, 404
Scale *v.* Veley, 718
Schneider *v.* Morris, 230
Schofield's case, 342
Scott, *ex parte*, 301
— *v.* Gillimore, 132
— *v.* Sheppard, 312
— *v.* Washington, 79
Scriveners, Society of London, *v.* Brooking,
1275
Seaborne *v.* Maddy, 407
Seale *v.* Regina, 1259
Sedley *v.* Arbouin, 857
Self *v.* Oriel, 166
Sells *v.* Brown, 1275
Sellwood *v.* Mount, 172, 258, 1145, 1156,
1331
Sentance *v.* Poole, 126
Sewell *v.* Taylor, 1396
— *v.* Twyford, 715
Shackell *v.* West, 169, 263, 267
Sharp *v.* Aspinall, 410
Sharpe *v.* Aspinall, 1107
Shatwell *v.* Hall, 1025
Shaw *v.* Morley, 446
— *v.* Chairitie, 800, 813
Sheel's case, 284

Shelbery v. Bussard, 642
 Shepherd v. Payne, 753
 Sheppard v. Bradford Churchwardens, 267
 Short v. Lovejoy, 312
 Shutt v. Lewis, 1393
 Sibbett v. Ainsley, 404
 Simmons v. Millengen, 291, 297
 Simpkin, *ex parte*, 226
 Simpson v. Scales, 899
 Sinclair, *in re*, 406
 Skingley v. Surridge, 723, 1148
 Skuse v. Davis, 320, 351, 353
 Sly v. Stevenson, 1025
 Smith's case, 36
 — *ex parte*, 26, 172, 266, 1116
 — v. Adkins, 746
 — v. Deighton, 707
 — v. Dixon, 713, 717
 — v. Huson, 451
 — v. Keats, 712, 714
 — v. Pelah, 1412
 — v. Redding, 79
 — v. Regina, 336, 337, 1299
 — v. Roche, 410, 416, 420
 — v. Roches, 408
 — v. Shaw, 225
 — v. Wiltshire, 1022, 1027
 Snowden v. Herring, 755
 Soden v. Cray, 125
 Sommerville's case, 553
 — v. Mirehouse, 723
 Souden's case, 1114
 South Cadbury v. Bradden, 163
 South Moulton case, 222
 South Wales Railway Company v. Richards,
 619
 Speires v. Parker, 1121
 Spencely v. De Willott, 414
 Spencer v. Smith, 132
 Spilsbury v. Mickelthwaite, 294
 Spooner v. Brewster, 702
 Spry v. Flood, 694, 696, 699
 — v. Gallop, 692, 693
 — v. Marylebone, 692
 Stacey v. Whitehurst, 19, 26
 Stafford's case, 282
 Stallwood v. Fredger, 686
 Stamp v. Sweetland, 871, 875
 Stanhope v. Thorsby, 266
 Starkey v. Berton, 745
 Stead v. Heaton, 715
 Steel v. Smith, 1121
 Stephens v. Myers, 309
 — v. Watson, 122
 Stephenson v. Raine, 763
 Sterne's case, 22
 Stevens, *ex parte*, 706
 — v. Clark, 1104
 — v. Watson, 65
 Stevenson v. Langston, 737
 Still v. Palfrey, 709, 717
 — v. Walls, 60, 851, 863, 1162
 Stockfleth v. De Tastet, 964
 Stocks v. Booth, 695, 696, 699
 Stonehouse v. Elliott, 291, 293
 Stoughton v. Reynolds, 742, 744

Stracey v. Frances, 689
 Straight v. Gee, 1027, 1028
 Street v. Fugwell, 1414
 Stroughton v. Reynolds, 738
 Sturch v. Clarke, 1025
 Stutter v. Freston, 738, 742
 Sunderland Vestry, *re*, 573
 Surrey Canal Company v. Hall, 505
 Sussex Peerage case, 456
 Sutton v. Sutton, 149, n.
 Sweetman v. Guest, 265, 1105
 Swenden's case, 8
 Swendon's case, 9
 Swinton v. Molley, 314
 Sydley's case, 1394
 Sydserff v. Regina, 981
 Symonds v. Dimsdale, 634
 Syred v. Carruthers, 266, 267

T.

Tarrant v. Haxby, 763, 766
 Tarry v. Newman, 1106, 1131
 Tattersall v. Knight, 696, 698
 Taunton, *ex parte*, 621
 Taylor v. Best, 162
 — v. Humphries, 128, 1122, 1136
 — v. Lawson, 1141
 — v. Oram, 267
 Tennant v. Cumberland, 129
 Thackrah v. Seymour, 899
 Theobald v. Crickmore, 723, 1027
 Thomas v. Churton, 1233, 1236
 — v. Swansea Mayor, 777
 Thompson, *in re*, 320, 358, 1137
 — v. Cooper, 714
 — v. Harvey, 73
 — v. Lacy, 64
 — v. Poole, 789, n., 1144
 — v. Saul, 404
 Thorney's case, 1223
 Throgmorton v. Allen, 293, 862
 Thurston v. Slatford, 254
 Tiarks v. Hutton, 709, 717
 Tickell v. Road, 313
 Timothy v. Simpson, 59, 287, 299, 300
 Tinsley v. Nassau, 401
 Titchmarsh, *ex parte*, 691
 Topsall v. Ferrers, 693
 Tordoff, *re*, 1141, 1150
 Touch v. Empsey, 231
 Tovey v. Lindsay, 452
 Townsend v. Read, 264
 — v. Thorpe, 762
 — v. Wathen, 1412
 Tozer v. Child, 756
 Tracey v. Talbot, 556
 Trapshaw's case, 557
 Trueman's case, 456
 Tuberville v. Savage, 309
 Tullay v. Reed, 313
 Tunncliffe v. Tedd, 319, 352
 Turner's case, 625, 870
 — v. Baynes, 748, 755

Turner *v.* Postmaster-General, 1104, 1110,
1126, 1137
— *v.* Stirling, 1206

U.

Underhill *v.* Witts, 1000
Unwin, *in re*, 1227
Urquhart, *ex parte*, 573

V.

Van Boven's case, 646, 881
Vandercomb's case, 349
Vandercomb and Abbott's case, 353
Varley's case, 818
Varty *v.* Nunn, 715, 727
Vaughan, *ex parte*, 1137
Vaughton *v.* Bradshaw, 319
Vaux's case, 17, 347, 356
Veley *v.* Burder, 706, 710
Venables *v.* Hardman, 267
Viner *v.* Tonbridge Churchwardens, 579
Vowels *v.* Young, 407

W.

Wade *v.* Stiff, 2
Wainwright *v.* Bagshaw, 754
Wakefield's case, 8
Wakeman *v.* Robinson, 315
Walker's case, 296
— *v.* Clyde, 700
— *v.* Great Western Railway Company,
265
— *v.* Sherwin, 1342
Wall *v.* Macnamara, 314
Wallace *v.* Smith, 1026
Wallwork, *ex parte*, 639
Walsby *v.* Anley, 330
Walter *v.* Gunner, 695, 696
— *v.* Summer, 693
Ward, *in re*, 1207
— *v.* Snell, 857
Warner *v.* Gater, 717
— *v.* Gates, 726
Waterhouse *v.* Keen, 1026
Watney *v.* Lambert, 717, 725
Watson's case, 989
— *v.* Bodell, 293, 863
— *v.* McCullum, 361
Watts *v.* Kent Justices, 265
— *v.* Lambard, 265
Weatherhead *v.* Drewry, 1002, 1366
— *v.* Drury, 995
Weaver *v.* Bush, 313
— *v.* Price, 220
— *v.* Ward, 315
Webb *v.* Hill, 165
Webster *v.* Watts, 299, 313
Wedge *v.* Berkley, 291, 293

Wednesbury Local Board *v.* Stephenson,
267
Weekes *v.* Oxenden, 712
Weeks *v.* Copleton, 468
Welcome *v.* Lake, 756
Weleker *v.* Le Pelletier, 3, 5
West *v.* Smallwood, 301
Westerman, *ex parte*, 413, 424
West London Union Guardians *v.* —, 657
Westminster, Abbot of, *v.* Clerke, 157
— Coroner's case, 1217
West Riding of Yorkshire *v.* Regina, 514
Weston Rivers, *inter*, Inhabitants, 647
Wethered *v.* Callcutt, 754
Wheeler *v.* Birmingham Overseers, 265
— *v.* Whiting, 296, 313
Whitaker *v.* Wisbey, 337
White, *in re*, 622
— *v.* Beard, 706, 716, 717, 718
— *v.* Edmunds, 296, 300
— *v.* Haugh, 648
— *v.* Reeves, 899
— *v.* Taylor, 293
Whitely *v.* Heaton, 127
Whittle *v.* Frankland, 1112, 1125
Wicke's case, 702
Wickes *v.* Clutterbuck, 872
Wiffen *v.* Kennard, 312
Wigge's case, 347, 349
Wigton Overseers *v.* Snaith Overseers, 248
Wilde *v.* Russell, 769
Wildes *v.* Norris, 771
Wilke's case, 164
Wilkins *v.* Hemsworth, 420, 878, 1163
— *v.* Wright, 871, 872, 1110, 1118, 1140,
1146, 1147, 1162
Wilkinson *v.* Dutton, 320, 1137
Williams, *ex parte*, 1127
— *v.* Adams, 1138
— *v.* Glennister, 60, 288, 304, 314, 733,
749
— *v.* Jones, 302
— *v.* Vaughan, 743
Wilmott, *ex parte*, 218
Wilson's case, 818
— *v.* McMath, 702
— *v.* Stewart, 26, 1108
— *v.* Sunderland Churchwardens, 722
— *v.* Sunderland-near-the Sea, 512
Windham *v.* Chetwynd, 1140
Winfield, *ex parte*, 743
Wise *v.* Devon Clerk of Peace, 1368
Witcher *v.* Chesham, 699
Withipole's case, 2, 283
Wood *v.* Fenwick, 877
Woodcock *v.* Gibson, 735, 746, 749
Woodhouse *v.* Woods, 266
Wooding *v.* Oxley, 299, 304
Woodward *v.* Makepeace, 710, 711
Woolcombe *v.* Ouldrige, 695
Worth *v.* Terrington, 734
Wray *v.* Ellis, 448
— *v.* Toke, 81, 85, 87, 125, 1109
Wrench *v.* Lord, 746
Wright *v.* Court, 296, 304, 305

Wright *v.* Holgate, 404
— *v.* Ramscot, 1411
— *v.* Regina, 984
Wyllie *v.* Mott, 694, 696, 700

Y.

Yates *v.* Chippindale, 406, 407

Young's case, 342, 467
Yorkshire Tire Company *v.* Rotherham Local
Board of Health, 169, 267
Yoxley's case, 876

Z.

Zouch *v.* Empsey, 412

TABLE OF STATUTES CITED.

- | | |
|--|---|
| <p> 9 Hen. III., c. 15, 511
 51 Hen. III., c. 6, 596
 3 Edw. I., c. 9, 1235
 3 Edw. I., c. 10, 1201, 1226
 3 Edw. I., c. 15, 363, 376, 369, 377
 4 Edw. I., c. 2, 1226
 6 Edw. I., c. 9, 363
 13 Edw. I., c. 1, 334
 13 Edw. I., st. 2, c. 6, 638, 732, 994
 13 Edw. I., c. 15, 377
 13 Edw. I., c. 30, 334
 13 Edw. I., c. 49, 600
 27 Edw. I., c. 3, 334, 335
 27 Edw. I., c. 4, 334
 33 Edw. I., st. 2, 977
 35 Edw. I., st. 2, 689
 9 Edw. II., s. 1, c. 3, 734
 12 Edw. II., c. 3, 334
 12 Edw. II., c. 4, 334
 2 Edw. III., c. 2, 334
 2 Edw. III., c. 3, 58
 2 Edw. III., c. 16, 334
 4 Edw. III., c. 2, 334
 4 Edw. III., c. 10, 857
 4 Edw. III., c. 11, 334
 4 Edw. III., c. 12, 334
 5 Edw. III., c. 8, 371
 5 Edw. III., c. 14, 343
 9 Edw. III., c. 4 and 5, s. 1, 334
 14 Edw. III., st. 1, c. 8, 1201
 14 Edw. III., st. 1, c. 16, 334
 15 Edw. III., c. 6, s. 1, 759
 20 Edw. III., 509
 20 Edw. III., c. 1, 334
 20 Edw. III., c. 6, 334
 25 Edw. III., c. 2, 819
 25 Edw. III., c. 13, 801
 28 Edw. III., c. 6, 1201
 34 Edw. III., c. 1, 401
 42 Edw. III., c. 11, 334
 15 Rich. II., c. 3, 42
 20 Rich. II., c. 1, 58
 5 Hen. IV., c. 10, 847
 9 Hen. V., st. 2, c. 6, 801
 8 Hen. VI., c. 9, 1104, 1151
 23 Hen. VI., c. 9, 363
 1 Edw. IV., c. 2, 369
 17 Edw. IV., c. 4, 498
 22 Edw. IV., c. 13, 1223
 22 Edw. IV., c. 16, 1223
 1 Rich. III., c. 3, 1214 </p> | <p> 3 Hen. VII., c. 1, 1212, 1235
 3 Hen. VII., c. 3, 363
 22 Hen. VIII., c. 5, 503, 520, 997
 22 Hen. VIII., c. 5, ss. 2, 3, 511
 22 Hen. VIII., c. 5, s. 4, 516
 22 Hen. VIII., c. 5, ss. 4, 6, 8, 521
 22 Hen. VIII., c. 5, s. 9, 511
 22 Hen. VIII., c. 9, 458
 22 Hen. VIII., c. 9, ss. 11, 12, 14, 458
 23 Hen. VIII., c. 2, 847
 23 Hen. VIII., c. 9, s. 16, 1121
 24 Hen. VIII., c. 36, 563
 28 Hen. VIII., c. 15, 42
 32 Hen. VIII., c. 9, ss. 2, 6, 600
 32 Hen. VIII., c. 13, ss. 2, 3, 4, 6, 7, 9, 930
 33 Hen. VIII., c. 6, 1117
 33 Hen. VIII., c. 23, 155
 34 & 35 Hen. VIII., c. 4, 388
 37 Hen. VIII., c. 1, 768, 1377
 37 Hen. VIII., c. 1, s. 3, 1378
 1 Edw. VI., c. 12, s. 22, 975
 2 & 3 Edw. VI., c. 24, s. 2, 34, 1208
 2 & 3 Edw. VI., c. 24, s. 3, 34
 3 & 4 Edw. VI., c. 1, 1377
 3 & 4 Edw. VI., c. 19, 175
 5 & 6 Edw. VI., c. 4, s. 1, 733
 5 & 6 Edw. VI., c. 4, s. 3, 734
 5 & 6 Edw. VI., c. 11, s. 12, 975
 5 & 6 Edw. VI., c. 14, 176
 5 & 6 Edw. VI., c. 25, 91
 1 Mary, sess. 2, c. 3, 732, 733
 1 & 2 Ph. & Mar., c. 13, 363
 1 & 2 Ph. & Mar., c. 13, s. 5, 1214, 1216
 1 & 2 Ph. & Mar., c. 13, s. 7, 648
 1 Eliz., c. 2, 750, 934
 1 Eliz., c. 2, ss. 4—8, 935
 1 Eliz., c. 2, s. 14, 1400
 5 Eliz., c. 9, 1315
 8 Eliz., c. 8, s. 3, 930
 13 Eliz., c. 3, s. 2, 1162
 23 Eliz., c. 1, 1400
 29 Eliz., c. 6, 1400
 31 Eliz., c. 5, s. 4, 600
 31 Eliz., c. 7, 1337
 43 Eliz., c. 2, 632, 759, 1290
 43 Eliz., c. 2, s. 1, 748
 43 Eliz., c. 7, s. 1, 1123
 1 Jac. I., 451
 1 Jac. I., c. 9, 91
 1 Jac. I., c. 9, s. 2, 1151
 1 Jac. I., c. 11, 450, 452 </p> |
|--|---|

- 1 Jac. I., c. 11, s. 3, 453
 3 Jac. I., c. 4, 1400
 3 Jac. I., c. 5, 1400
 3 Jac. I., c. 10, 1332
 3 Jac. I., c. 10, s. 1, 855, 1029, 1328
 4 Jac. I., c. 4 and 5, 91
 4 Jac. I., c. 5, ss. 2, 6, 1431
 7 Jac. I., c. 5, 756, 1024
 21 Jac. I., c. 7, 1115, 1151
 21 Jac. I., c. 7, s. 3, 1430
 21 Jac. I., c. 7, s. 4, 91, 1431
 21 Jac. I., c. 8, s. 8, 643
 21 Jac. I., c. 12, 756
 21 Jac. I., c. 12, s. 5, 1028
 21 Jac. I., c. 19, 389
 31 Jac. I., c. 28, s. 12, 930
 1 Car. I., c. 4, 91, 1151
 3 Car. I., c. 1, 601
 3 Car. I., c. 3, 91
 3 Car. I., c. 4, ss. 7, 8, 175
 16 Car. I., c. 11, 704
 13 & 14 Car. II., c. 4, 690, 1410
 13 & 14 Car. II., c. 4, s. 7, 984
 13 & 14 Car. II., c. 4, ss. 19, 20, 21, 935
 13 & 14 Car. II., c. 11, 854
 13 & 14 Car. II., c. 12, 1002
 13 & 14 Car. II., c. 12, s. 15, 1033
 17 Car. II., c. 2, 1404
 22 Car. II., c. 1, 618, 1404
 22 Car. II., c. 1, s. 6, 222
 22 & 23 Car. II., c. 25, 1121
 22 & 23 Car. II., c. 25, s. 7, 1118
 25 Car. II., c. 2, 1400
 29 Car. II., c. 7, 385, 601, 1143
 29 Car. II., c. 7, s. 6, 882
 30 Car. II., st. 2, c. 1, 1400
 30 Car. II., c. 8, 778
 31 Car. II., c. 2, 376
 31 Car. II., c. 2, s. 2, 856
 31 Car. II., c. 2, s. 3, 373
 31 Car. II., c. 2, s. 5, 857
 31 Car. II., c. 2, s. 7, 369
 1 W. & M., st. 1, c. 21, s. 8, 1378
 1 W. & M., sess. 2, c. 2, 376
 1 W. & M., c. 18, 733, 1401, 1404
 1 W. & M., c. 18, s. 1, 1400
 1 W. & M., c. 18, s. 4, 1403
 1 W. & M., c. 18, s. 7, 1404
 1 W. & M., c. 18, s. 8, 1405
 1 W. & M., c. 18, s. 11, 1405
 1 W. & M., c. 18, s. 18, 1402, 1403
 1 W. & M., c. 10, s. 2, 1117
 3 & 4 W. & M., c. 10, 1119
 3 & 4 W. & M., c. 11, s. 6, 767, 1006
 5 W. & M., c. 11, 532
 5 & 6 W. & M., c. 11, 536, 632
 5 & 6 W. & M., c. 11, s. 1, 634
 5 & 6 W. & M., c. 11, s. 2, 633, 635
 5 & 6 W. & M., c. 11, ss. 2, 4, 643
 8 & 9 W. & M., c. 33, ss. 1, 2, 632
 8 & 9 W. & M., c. 33, ss. 4, 5, 633
 1 Will. III., c. 18, s. 1, 736
 1 Will. III., c. 21, 1377
 1 Will. III., c. 21, s. 6, 768, 769
 5 & 6 Will. III., c. 21, s. 5, 768
 6 & 7 Will. III., c. 4, 736, 737
 6 & 7 Will. III., c. 10, 778
 7 Will. III., c. 3, 283
 7 & 8 Will. III., c. 3, s. 2, 975
 7 & 8 Will. III., c. 6, 719
 7 & 8 Will. III., c. 34, 724
 8 & 9 Will. III., c. 26, s. 4, 805
 8 & 9 Will. III., c. 33, s. 2, 633
 9 & 10 Will. III., c. 11, 1006
 9 & 10 Will. III., c. 15, 361
 9 & 10 Will. III., c. 15, s. 13, 360
 9 & 10 Will. III., c. 27, 1117
 9 & 10 Will. III., c. 32, 1404
 10 & 11 Will. III., c. 23, s. 2, 736
 10 & 11 Will. III., c. 23, ss. 7, 8, 770
 11 & 12 Will. III., c. 7, 45
 12 & 13 Will. III., c. 2, 152
 1 Anne, st. 1, c. 18, 520, 532
 1 Anne, st. 1, c. 18, s. 2, 522
 1 Anne, st. 1, c. 18, ss. 3, 6, 7, 8, 9, 523
 1 Anne, st. 1, c. 18, s. 4, 538
 1 Anne, st. 1, c. 18, s. 13, 537
 5 Anne, c. 14, 1121
 5 Anne, c. 14, s. 2, 1120
 5 Anne, c. 14, s. 4, 1143
 6 Anne, c. 31, 752
 7 Anne, c. 5, 149, n.
 7 Anne, c. 17, s. 2, 752
 8 Anne, c. 18, s. 3, 1115
 9 Anne, c. 14, s. 8, 668
 9 Anne, c. 20, 1206
 9 Anne, c. 28, 779
 10 Anne, c. 2, 1404
 10 Anne, c. 2, s. 9, 1405
 1 Geo. I., c. 2, s. 4, 152
 1 Geo. I., st. 2, c. 13, 995
 5 Geo. I., c. 27, 149, n.
 6 Geo. I., c. 19, 45, 847, 850
 9 Geo. I., c. 7, s. 8, 253
 11 Geo. I., c. 30, s. 16, 1152
 12 Geo. I., c. 29, 346
 2 Geo. II., c. 26, s. 4, 1151
 3 Geo. II., c. 26, 781
 4 Geo. II., c. 21, 149, n.
 5 Geo. II., c. 15, 169
 5 Geo. II., c. 19, s. 1, 243
 5 Geo. II., c. 19, ss. 1, 2, 640
 5 Geo. II., c. 19, s. 3, 641
 6 Geo. II., c. 14, 346
 7 Geo. II., c. 38, s. 4, 254
 9 Geo. II., c. 33, ss. 14, 15, 20, 91
 11 Geo. II., c. 15, 778
 11 Geo. II., c. 19, s. 4, 241, 875, 1121, 1189
 11 Geo. II., c. 19, s. 7, 1025
 12 Geo. II., c. 29, 1360
 12 Geo. II., c. 29, s. 1, 520
 12 Geo. II., c. 29, s. 1, 13, 14, 523
 12 Geo. II., c. 29, s. 2, 1343
 12 Geo. II., c. 29, s. 6, 1373
 12 Geo. II., c. 29, ss. 7, 8, 9, 12, 1374
 12 Geo. II., c. 29, s. 13, 539
 12 Geo. II., c. 29, ss. 13, 14, 1351
 12 Geo. II., c. 29, ss. 15, 16, 1352
 12 Geo. II., c. 36, 1143
 13 Geo. II., c. 18, 1343, 1366
 14 Geo. II., c. 33, s. 1, 515, 530
 15 Geo. II., c. 24, 818

- 15 Geo. II., c. 28, 806, 808
 15 Geo. II., c. 33, s. 6, 445
 15 Geo. II., c. 33, ss. 7, 8, 440
 16 Geo. II., c. 18, 245
 17 Geo. II., c. 3, s. 2, 754
 17 Geo. II., c. 5, 1120
 17 Geo. II., c. 37, 725
 17 Geo. II., c. 38, 754, 877
 17 Geo. II., c. 38, s. 4, 251
 18 Geo. II., c. 15, 736, 737
 19 Geo. II., c. 21, 1117, 1124, 1143
 19 Geo. II., c. 21, s. 3, 290
 19 Geo. II., c. 34, 559
 20 Geo. II., c. 19, s. 2, 877
 21 Geo. II., c. 3, 346
 22 Geo. II., c. 33, art. 1, 935
 22 Geo. II., c. 46, 345
 22 Geo. II., c. 46, s. 14, 770
 24 Geo. II., c. 40, s. 24, 92
 24 Geo. II., c. 44, 757
 24 Geo. II., c. 44, s. 6, 1021
 24 Geo. II., c. 44, s. 8, 298, 1022
 24 Geo. II., c. 55, s. 1, 848
 25 Geo. II., c. 29, 1206
 25 Geo. II., c. 29, s. 6, 1235
 25 Geo. II., c. 36, s. 2, 1393, 1394
 25 Geo. II., c. 36, ss. 2, 3, 1388
 25 Geo. II., c. 36, ss. 4, 5, 6, 1389
 25 Geo. II., c. 36, ss. 5, 7, 8, 9, 10, 1390
 25 Geo. II., c. 36, s. 10, 1395
 25 Geo. II., c. 36, ss. 13, 14, 15, 1391
 26 Geo. II., c. 13, s. 12, 92
 26 Geo. II., c. 14, s. 1, 3, 4, 774
 26 Geo. II., c. 27, 1112
 26 Geo. II., c. 31, 92
 26 Geo. II., c. 31, s. 2, 96
 26 Geo. II., c. 31, s. 4, 97, n.
 26 Geo. II., c. 33, 729
 26 Geo. II., c. 74, 253
 27 Geo. II., c. 3, 1014, 1332
 27 Geo. II., c. 3, s. 1, 1328
 27 Geo. II., c. 3, ss. 1, 4, 855, 1029
 27 Geo. II., c. 20, 112, 724
 27 Geo. II., c. 20, s. 2, 1020, 1028
 28 Geo. II., c. 18, 1388
 28 Geo. II., c. 19, s. 1, 1391
 28 Geo. II., c. 19, s. 2, 92
 29 Geo. II., c. 12, ss. 23, 24, 92
 30 Geo. II., c. 3, s. 87, 345
 30 Geo. II., c. 24, s. 14, 92
 30 Geo. II., c. 24, s. 17, 374
 31 Geo. II., c. 29, s. 38, 385
 31 Geo. II., c. 40, 176
 3 Geo. III., c. 11, s. 12, 385
 5 Geo. III., c. 14, s. 4, 1138
 5 Geo. III., c. 46, 107
 5 Geo. III., c. 46, ss. 20, 21, 22, 92
 6 Geo. III., c. 48, s. 1, 1153
 10 Geo. III., c. 18, 1405
 12 Geo. III., c. 61, s. 11, 1121
 12 Geo. III., c. 61, s. 18, 1155
 12 Geo. III., c. 71, 175
 13 Geo. III., c. 27, 149, n.
 13 Geo. III., c. 78, 517, 538
 13 Geo. III., c. 78, s. 1, 532
 13 Geo. III., c. 78, s. 19, 226
 13 Geo. III., c. 78, s. 24, 532
 13 Geo. III., c. 78, s. 80, 223
 13 Geo. III., c. 80, 863
 14 Geo. III., c. 20, s. 2, 1330
 14 Geo. III., c. 84, 152
 15 Geo. III., c. 27, 778
 15 Geo. III., c. 32, 1337
 16 Geo. III., c. 30, 237, 620, 1119
 17 Geo. III., c. 38, s. 4, 261
 17 Geo. III., c. 42, ss. 1, 2, 3, 4, 5, 499
 17 Geo. III., c. 42, ss. 6, 7, 8, 500
 17 Geo. III., c. 53, 57
 17 Geo. III., c. 56, 1120
 17 Geo. III., c. 56, ss. 1, 2, 20, 22, 882
 17 Geo. III., c. 56, s. 11, 289
 17 Geo. III., c. 56, ss. 14, 20, 221
 17 Geo. III., c. 106, 239
 18 Geo. III., c. 19, 1145, 1330
 18 Geo. III., c. 19, s. 4, 1030
 18 Geo. III., c. 19, s. 5, 1031
 18 Geo. III., c. 19, ss. 6, 9, 1032
 19 Geo. III., c. 21, s. 2, 1104
 19 Geo. III., c. 44, s. 1, 1404, 1405
 19 Geo. III., c. 44, ss. 2, 3, 1410
 19 Geo. III., c. 50, s. 2, 1105
 19 Geo. III., c. 74, s. 70, 339
 21 Geo. III., c. 49, s. 1, 130
 21 Geo. III., c. 49, ss. 1, 8, 1397
 21 Geo. III., c. 49, s. 2, 1391
 21 Geo. III., c. 49, ss. 3, 4, 5, 6, 7, 8, 1392
 21 Geo. III., c. 66, 57
 21 Geo. III., c. 109, s. 1, 890
 21 Geo. III., c. 109, s. 2, 891
 22 Geo. III., c. 47, 1109
 22 Geo. III., c. 47, s. 13, 1118
 23 Geo. III., c. 88, 564
 24 Geo. III., c. 31, 223
 24 Geo. III., c. 47, s. 1, 1119
 24 Geo. III., c. 55, s. 1, 1024
 25 Geo. III., c. 59, 1118
 26 Geo. III., c. 33, 455
 26 Geo. III., c. 71, 198
 26 Geo. III., c. 71, s. 1, 198
 26 Geo. III., c. 71, s. 2, 199
 26 Geo. III., c. 71, s. 3, 199
 26 Geo. III., c. 71, s. 4, 200
 26 Geo. III., c. 71, s. 5, 201
 26 Geo. III., c. 71, s. 6, 202
 26 Geo. III., c. 71, s. 7, 202
 26 Geo. III., c. 71, ss. 8, 9, 203
 26 Geo. III., c. 71, ss. 10, 11, 12, 204
 26 Geo. III., c. 71, s. 13, 205
 26 Geo. III., c. 71, ss. 14, 15, 206
 26 Geo. III., c. 71, s. 16, 206
 26 Geo. III., c. 71, s. 18, 207
 27 Geo. III., c. 11, 847, 850
 28 Geo. III., c. 53, s. 2, 801
 29 Geo. III., c. 41, s. 27, 217
 31 Geo. III., c. 21, s. 4, 1146
 31 Geo. III., c. 32, 1401
 31 Geo. III., c. 32, s. 8, 736
 31 Geo. III., c. 36, ss. 1, 4, 778
 32 Geo. III., c. 59, 92
 33 Geo. III., c. 15, s. 2, 1020
 33 Geo. III., c. 55, 112
 33 Geo. III., c. 55, s. 1, 1019

- 33 Geo. III., c. 95, 622
 34 Geo. III., c. 24, s. 19, 1343
 34 Geo. III., c. 97, ss. 31, 32, 1342
 35 Geo. III., c. 113, 106
 35 Geo. III., c. 113, ss. 2, 3, 4, 5, 112
 35 Geo. III., c. 113, ss. 6, 10, 11, 12, 113
 35 Geo. III., c. 113, s. 12, 116
 35 Geo. III., c. 113, ss. 14, 16, 106
 36 Geo. III., c. 60, 596
 36 Geo. III., c. 60, ss. 2, 3, 4, 597
 36 Geo. III., c. 60, ss. 5, 6, 7, 8, 14, 15, 16, 598
 36 Geo. III., c. 60, ss. 9, 10, 11, 12, 13, 17, 18, 19, 599
 36 Geo. III., c. 60, ss. 20, 21, 600
 38 Geo. III., c. 52, 625, 1323
 38 Geo. III., c. 52, ss. 2, 3, 1323
 38 Geo. III., c. 52, s. 5, 378
 38 Geo. III., c. 54, s. 13, 92
 38 Geo. III., c. 65, s. 1, 930
 38 Geo. III., c. 65, ss. 2, 3, 931
 38 Geo. III., c. 65, ss. 4, 5, 932
 38 Geo. III., c. 65, ss. 6, 7, 8, 933
 38 Geo. III., c. 65, s. 9, 934
 39 Geo. III., c. 37, 44
 39 Geo. III., c. 46, 339
 39 Geo. III., c. 79, s. 31, 124
 39 Geo. III., c. 86, 92
 39 & 40 Geo. III., c. 94, 284
 39 & 40 Geo. III., c. 94, s. 3, 846, 868
 39 & 40 Geo. III., c. 99, ss. 26, 28, 29, 1107
 39 & 40 Geo. III., c. 106, 1159
 39 & 40 Geo. III., c. 106, s. 4, 252
 40 Geo. III., c. 94, s. 2, 284
 41 Geo. III., c. 23, s. 4, 231
 41 Geo. III., c. 73, 759
 41 Geo. III., c. 78, s. 1, 1029
 41 Geo. III., c. 78, s. 2, 1030
 41 Geo. III., c. 109, 895, 909, 912
 41 Geo. III., c. 109, s. 3, 892
 41 Geo. III., c. 109, s. 8, 897
 41 Geo. III., c. 109, s. 9, 900
 41 Geo. III., c. 109, s. 28, 901
 41 Geo. III., c. 109, s. 35, 906
 41 Geo. III., c. 109, s. 36, 916
 41 Geo. III., c. 109, s. 39, 917
 41 Geo. III., c. 109, ss. 42, 43, 44, 918
 42 Geo. III., c. 38, s. 18, 83
 42 Geo. III., c. 38, s. 38, 1151
 42 Geo. III., c. 90, 1405
 42 Geo. III., c. 90, s. 174, 736
 42 Geo. III., c. 116, s. 154, 1206
 43 Geo. III., c. 10, 1405
 43 Geo. III., c. 11, s. 6, 155
 43 Geo. III., c. 49, s. 1, 532
 43 Geo. III., c. 58, 13
 43 Geo. III., c. 59, 516, 538
 43 Geo. III., c. 59, ss. 1, 3, 4, 6, 517
 43 Geo. III., c. 59, s. 2, 515
 43 Geo. III., c. 59, ss. 2, 4, 530
 43 Geo. III., c. 59, s. 4, 539
 43 Geo. III., c. 59, s. 5, 504
 43 Geo. III., c. 59, s. 7, 518
 43 Geo. III., c. 96, s. 12, 1405
 43 Geo. III., c. 108, s. 5, 693
 43 Geo. III., c. 113, s. 5, 34
 43 Geo. III., c. 119, 1155
 45 Geo. III., c. 54, ss. 1, 2, 749
 45 Geo. III., c. 92, s. 3, 341
 45 Geo. III., c. 121, s. 7, 1116, 1118
 47 Geo. III., c. 68, 779, 781, n.
 47 Geo. III., c. 68, s. 113, 794
 48 Geo. III., c. 58, s. 1, 279
 48 Geo. III., c. 74, s. 13, 242, n.
 48 Geo. III., c. 74, s. 15, 244
 48 Geo. III., c. 75, s. 2, 591
 48 Geo. III., c. 75, ss. 3, 4, 5, 6, 7, 592
 48 Geo. III., c. 75, ss. 8, 9, 10, 593
 48 Geo. III., c. 75, ss. 11, 12, 13, 14, 594
 48 Geo. III., c. 142, 217
 48 Geo. III., c. 143, 106
 48 Geo. III., c. 143, s. 3, 1160
 48 Geo. III., c. 143, ss. 7, 10, 92
 49 Geo. III., c. 53, 217
 49 Geo. III., c. 63, s. 8, 1118
 49 Geo. III., c. 68, 255, 1019
 49 Geo. III., c. 68, s. 3, 872, 878
 50 Geo. III., c. 41, 289
 50 Geo. III., c. 41, s. 20, 289
 50 Geo. III., c. 48, 240
 50 Geo. III., c. 48, s. 4, 229
 50 Geo. III., c. 48, s. 25, 230
 50 Geo. III., c. 49, 1024
 51 Geo. III., c. 100, 1323
 51 Geo. III., c. 100, s. 2, 1323
 51 Geo. III., c. 151, s. 49, 692
 52 Geo. III., c. 93, 256
 52 Geo. III., c. 102, ss. 2, 3, 669
 52 Geo. III., c. 102, ss. 4, 5, 6, 7, 8, 9, 670
 52 Geo. III., c. 102, ss. 10, 11, 671
 52 Geo. III., c. 102, ss. 12, 13, 14, 672
 52 Geo. III., c. 110, s. 1, 524
 52 Geo. III., c. 110, ss. 2, 5, 526
 52 Geo. III., c. 129, 217
 52 Geo. III., c. 146, s. 2, 752
 52 Geo. III., c. 155, 1401, 1403
 52 Geo. III., c. 155, s. 1, 1404
 52 Geo. III., c. 155, ss. 1, 2, 11, 1401
 52 Geo. III., c. 155, ss. 3, 4, 5, 1406
 52 Geo. III., c. 155, ss. 6, 7, 8, 9, 10, 1407
 52 Geo. III., c. 155, s. 9, 736
 52 Geo. III., c. 155, s. 12, 1402
 52 Geo. III., c. 155, ss. 13, 14, 15, 16, 1408
 52 Geo. III., c. 155, ss. 17, 18, 1409
 53 Geo. III., c. 92, 503
 53 Geo. III., c. 114, 823
 53 Geo. III., c. 127, 1027
 53 Geo. III., c. 127, s. 7, 723, 719, 725, 730, 757, n.
 53 Geo. III., c. 141, s. 8, 216
 53 Geo. III., c. 141, s. 9, 217
 53 Geo. III., c. 160, 1404
 54 Geo. III., c. 90, 515
 54 Geo. III., c. 90, s. 2, 516
 54 Geo. III., c. 145, 341
 54 Geo. III., c. 170, s. 12, 720
 55 Geo. III., c. 29, 229
 55 Geo. III., c. 50, 773, 1329
 55 Geo. III., c. 50, s. 5, 1330
 55 Geo. III., c. 50, s. 13, 857
 55 Geo. III., c. 51, 1363
 55 Geo. III., c. 51, ss. 1, 24, 1367, 1368
 55 Geo. III., c. 51, s. 12, 1343

- 55 Geo. III., c. 51, s. 16, 773
 55 Geo. III., c. 51, s. 17, 1374
 55 Geo. III., c. 51, s. 24, 1365, 1366
 55 Geo. III., c. 55, 1330
 55 Geo. III., c. 60, 899
 55 Geo. III., c. 68, 688
 55 Geo. III., c. 68, s. 2, 641, 900
 55 Geo. III., c. 68, s. 3, 235
 55 Geo. III., c. 78, 772
 55 Geo. III., c. 99, 473
 55 Geo. III., c. 137, s. 2, 290
 55 Geo. III., c. 137, s. 6, 749
 55 Geo. III., c. 143, s. 1, 518
 55 Geo. III., c. 143, s. 2, 519
 55 Geo. III., c. 143, ss. 3, 4, 520
 55 Geo. III., c. 143, s. 5, 527
 56 Geo. III., c. 21, 779
 56 Geo. III., c. 49, ss. 2, 1362
 56 Geo. III., c. 49, s. 4, 1363
 56 Geo. III., c. 53, ss. 2, 3, 217
 57 Geo. III., c. 19, 124
 57 Geo. III., c. 21, s. 1, 773
 57 Geo. III., c. 21, s. 2, 774
 57 Geo. III., c. 40, 779
 57 Geo. III., c. 46, 823
 57 Geo. III., c. 94, ss. 2, 4, 1354
 57 Geo. III., c. 113, 823
 58 Geo. III., c. 45, 578, 685, 707, 716, 740,
 741, 763, 767
 58 Geo. III., c. 45, ss. 14, 60, 730
 58 Geo. III., c. 45, ss. 16, 21, 22, 23, 24, 766
 58 Geo. III., c. 45, s. 21, 731
 58 Geo. III., c. 45, s. 29, 750
 58 Geo. III., c. 45, s. 31, 737
 58 Geo. III., c. 45, s. 38, 753
 58 Geo. III., c. 45, s. 40, 728
 58 Geo. III., c. 45, ss. 56, 57, 58, 59, 726
 58 Geo. III., c. 45, s. 60, 727
 58 Geo. III., c. 45, s. 64, 766
 58 Geo. III., c. 45, ss. 65, 75, 76, 78, 696
 58 Geo. III., c. 45, s. 71, 729
 58 Geo. III., c. 45, s. 73, 738, 744, 748
 58 Geo. III., c. 45, s. 74, 739, 747
 58 Geo. III., c. 45, s. 79, 697
 58 Geo. III., c. 45, s. 80, 691
 58 Geo. III., c. 60, 727
 58 Geo. III., c. 69, 707
 58 Geo. III., c. 69, s. 1, 708
 58 Geo. III., c. 69, s. 3, 741
 58 Geo. III., c. 69, ss. 3, 4, 709
 58 Geo. III., c. 70, 1321
 58 Geo. III., c. 70, s. 7, 1390
 59 Geo. III., c. 7, s. 2, 1378
 59 Geo. III., c. 7, ss. 3, 4, 1379
 59 Geo. III., c. 7, s. 5, 1380
 59 Geo. III., c. 7, s. 6, 1381
 59 Geo. III., c. 7, ss. 7, 8, 9, 10, 1382
 59 Geo. III., c. 7, ss. 11, 12, 13, 14, 1383
 59 Geo. III., c. 7, ss. 15, 16, 17, 18, 1384
 59 Geo. III., c. 12, 444, 747
 59 Geo. III., c. 12, s. 9, 746
 59 Geo. III., c. 12, ss. 17, 18, 749
 59 Geo. III., c. 12, ss. 24, 25, 626
 59 Geo. III., c. 46, 1
 59 Geo. III., c. 85, s. 3, 709
 59 Geo. III., c. 124, 697
 59 Geo. III., c. 127, 473
 59 Geo. III., c. 134, 685, 709, 716, 763, 767
 59 Geo. III., c. 134, s. 6, 766
 59 Geo. III., c. 134, s. 10, 693, 766
 59 Geo. III., c. 134, s. 14, 730
 59 Geo. III., c. 134, ss. 14, 40, 726
 59 Geo. III., c. 134, s. 16, 767
 59 Geo. III., c. 134, s. 30, 731, 739
 59 Geo. III., c. 134, s. 39, 688
 59 Geo. III., c. 134, s. 40, 717
 59 Geo. III., c. 135, ss. 23, 24, 25, 727
 59 Geo. III., c. 139, ss. 31, 32, 33, 40, 697
 59 Geo. III., c. 154, 578
 60 Geo. III., c. 1, 473
 60 Geo. III., c. 4, ss. 3, 4, 5, 629
 60 Geo. III. & 1 Geo. IV., c. 14, 848
 60 Geo. III. & 1 Geo. IV., c. 14, s. 1, 1322
 1 Geo. IV., c. 37, 1062
 1 Geo. IV., c. 56, 873, 875
 1 & 2 Geo. IV., c. 85, s. 1, 1357
 3 Geo. IV., c. 10, s. 2, 339
 3 Geo. IV., c. 23, 1141
 3 Geo. IV., c. 23, s. 2, 1107
 3 Geo. IV., c. 33, s. 7, 225
 3 Geo. IV., c. 46, 770
 3 Geo. IV., c. 72, 712
 3 Geo. IV., c. 72, s. 20, 731
 3 Geo. IV., c. 77, 92
 3 Geo. IV., c. 77, s. 7, 97, n.
 3 Geo. IV., c. 83, s. 4, 1396
 3 Geo. IV., c. 86, s. 17, 385
 3 Geo. IV., c. 92, 216
 3 Geo. IV., c. 106, ss. 2, 3, 4, 473
 3 Geo. IV., c. 106, ss. 5, 7, 8, 9, 474
 3 Geo. IV., c. 106, ss. 10, 11, 12, 475
 3 Geo. IV., c. 106, s. 13, 476
 3 Geo. IV., c. 106, ss. 14, 15, 477
 3 Geo. IV., c. 106, s. 16, 478
 3 Geo. IV., c. 106, ss. 17, 18, 19, 479
 3 Geo. IV., c. 106, ss. 20, 21, 22, 480
 3 Geo. IV., c. 106, ss. 23, 24, 25, 481
 3 Geo. IV., c. 106, ss. 26, 27, 482
 3 Geo. IV., c. 106, ss. 28, 29, 483
 3 Geo. IV., c. 106, ss. 30, 31, 32, 33, 484
 3 Geo. IV., c. 106, s. 35, 485
 3 Geo. IV., c. 110, 1116, 1119
 3 Geo. IV., c. 114, 344, 1396
 3 Geo. IV., c. 126, s. 32, 520
 3 Geo. IV., c. 126, ss. 40, 132, 290
 3 Geo. IV., c. 126, ss. 107, 108, 530
 3 Geo. IV., c. 126, s. 132, 1104
 4 Geo. IV., c. 34, 1141
 4 Geo. IV., c. 34, ss. 2, 3, 873
 4 Geo. IV., c. 34, s. 3, 870, 876, 1125
 4 Geo. IV., c. 64, 1306
 4 Geo. IV., c. 64, s. 20, 601
 4 Geo. IV., c. 64, s. 39, 859
 4 Geo. IV., c. 76, 455
 4 Geo. IV., c. 76, s. 28, 454
 4 Geo. IV., c. 94, s. 76, 1415
 4 Geo. IV., c. 95, s. 83, 1110
 4 Geo. IV., c. 95, s. 87, 224
 4 Geo. IV., c. 125, ss. 1, 6, 92
 5 Geo. IV., c. 18, 863
 5 Geo. IV., c. 18, s. 6, 1018
 5 Geo. IV., c. 36, ss. 1, 2, 730

- 5 Geo. IV., c. 83, s. 1, 564
 5 Geo. IV., c. 83, s. 3, 298
 5 Geo. IV., c. 83, ss. 3, 4, 6, 1396
 5 Geo. IV., c. 83, s. 4, 563, 872, 1105
 5 Geo. IV., c. 83, s. 6, 290, 300
 5 Geo. IV., c. 83, s. 8, 1029
 5 Geo. IV., c. 83, s. 11, 882
 5 Geo. IV., c. 83, ss. 11, 12, 1020
 5 Geo. IV., c. 83, s. 13, 123
 5 Geo. IV., c. 83, s. 22, 857
 5 Geo. IV., c. 85, 1304, 1306
 5 Geo. IV., c. 96, 359
 5 Geo. IV., c. 97, 149, n.
 5 Geo. IV., c. 103, 685
 6 Geo. IV., c. 16, 390
 6 Geo. IV., c. 33, s. 4, 832
 6 Geo. IV., c. 50, s. 2, 759
 6 Geo. IV., c. 50, s. 30, 617
 6 Geo. IV., c. 50, s. 34, 658
 6 Geo. IV., c. 50, s. 47, 157
 6 Geo. IV., c. 50, s. 89, 752
 6 Geo. IV., c. 64, s. 7, 847
 6 Geo. IV., c. 81, 67
 6 Geo. IV., c. 81, s. 17, 75
 6 Geo. IV., c. 81, s. 22, 70
 6 Geo. IV., c. 81, ss. 23, 24, 101
 6 Geo. IV., c. 92, 455
 6 Geo. IV., c. 103, s. 3, 1120
 6 Geo. IV., c. 105, 1116, 1118, 1152
 6 Geo. IV., c. 108, ss. 3, 49, 1116
 6 Geo. IV., c. 125, 1111, 1120
 6 Geo. IV., c. 129, 218, 977
 6 Geo. IV., c. 129, s. 3, 330
 7 Geo. IV., c. 15, 719
 7 Geo. IV., c. 31, s. 22, 452
 7 Geo. IV., c. 63, 340
 7 Geo. IV., c. 64, 34, 45, 460, 736
 7 Geo. IV., c. 64, s. 1, 369, 851
 7 Geo. IV., c. 64, s. 4, 1216
 7 Geo. IV., c. 64, ss. 4, 5, 6, 1227
 7 Geo. IV., c. 64, s. 9, 35, 613
 7 Geo. IV., c. 64, s. 12, 8, 1208
 7 Geo. IV., c. 64, s. 19, 2, 5, 172
 7 Geo. IV., c. 64, s. 20, 1125
 7 Geo. IV., c. 64, ss. 20, 21, 1384, 1385
 7 Geo. IV., c. 64, s. 21, 392
 7 Geo. IV., c. 64, s. 22, 271, 1015
 7 Geo. IV., c. 64, ss. 22, 23, 1315
 7 Geo. IV., c. 64, s. 23, 344, 1395
 7 Geo. IV., c. 64, s. 24, 1317, 1375
 7 Geo. IV., c. 64, s. 25, 1016
 7 Geo. IV., c. 64, ss. 25, 26, 1318
 7 Geo. IV., c. 64, s. 27, 49
 7 Geo. IV., c. 64, s. 28, 563
 7 Geo. IV., c. 66, 57
 7 Geo. IV., c. 75, 216
 7 Geo. IV., c. 142, ss. 73, 74, 298
 7 & 8 Geo. IV., c. 27, 225, 374, 620, 1118, 1123, 1138
 7 & 8 Geo. IV., c. 28, s. 1, 283
 7 & 8 Geo. IV., c. 28, s. 2, 284
 7 & 8 Geo. IV., c. 28, s. 4, 356
 7 & 8 Geo. IV., c. 28, s. 10, 377, 451
 7 & 8 Geo. IV., c. 28, s. 12, 50
 7 & 8 Geo. IV., c. 28, s. 67, 451
 7 & 8 Geo. IV., c. 29, 1106
 7 & 8 Geo. IV., c. 29, s. 13, 551
 7 & 8 Geo. IV., c. 29, s. 26, 872
 7 & 8 Geo. IV., c. 29, s. 53, 611, 626
 7 & 8 Geo. IV., c. 29, s. 77, 46
 7 & 8 Geo. IV., c. 30, s. 13, 539
 7 & 8 Geo. IV., c. 30, s. 24, 875
 7 & 8 Geo. IV., c. 30, ss. 24, 30, 1110
 7 & 8 Geo. IV., c. 31, s. 7, 1030
 7 & 8 Geo. IV., c. 38, 89, n., 107, 1017
 7 & 8 Geo. IV., c. 53, 76
 7 & 8 Geo. IV., c. 53, s. 29, 123
 7 & 8 Geo. IV., c. 58, s. 11, 736
 7 & 8 Geo. IV., c. 64, 50
 7 & 8 Geo. IV., c. 64, s. 27, 132
 7 & 8 Geo. IV., c. 77, 96
 9 Geo. IV., c. 15, 165
 9 Geo. IV., c. 17, 1404
 9 Geo. IV., c. 17, ss. 2, 5, 6, 1206
 9 Geo. IV., c. 18, 111
 9 Geo. IV., c. 27, s. 27, 357
 9 Geo. IV., c. 31, 13, 34, 319, 358, 450, 668, 734, 1154
 9 Geo. IV., c. 31, s. 19, 7
 9 Geo. IV., c. 31, s. 25, 991
 9 Geo. IV., c. 31, s. 27, 351, 1133
 9 Geo. IV., c. 31, s. 32, 48
 9 Geo. IV., c. 40, ss. 38, 40, 1153
 9 Geo. IV., c. 43, 410
 9 Geo. IV., c. 56, s. 13, 539
 9 Geo. IV., c. 58, 91, n.
 9 Geo. IV., c. 61, 65, 90, 92, 107, 460, 1299, 1396
 9 Geo. IV., c. 61, s. 1, 95
 9 Geo. IV., c. 61, s. 2, 97, 98
 9 Geo. IV., c. 61, ss. 3, 5, 100
 9 Geo. IV., c. 61, s. 4, 103
 9 Geo. IV., c. 61, ss. 7, 8, 12, 99
 9 Geo. IV., c. 61, s. 10, 96
 9 Geo. IV., c. 61, s. 15, 105
 9 Geo. IV., c. 61, s. 16, 95
 9 Geo. IV., c. 61, s. 17, 90
 9 Geo. IV., c. 61, ss. 17, 21, 95
 9 Geo. IV., c. 61, s. 18, 105
 9 Geo. IV., c. 61, ss. 19, 20, 21, 107
 9 Geo. IV., c. 61, s. 20, 124
 9 Geo. IV., c. 61, ss. 23, 31, 32, 33, 34, 110
 9 Geo. IV., c. 61, ss. 24, 25, 111
 9 Geo. IV., c. 61, s. 27, 113
 9 Geo. IV., c. 61, ss. 28, 29, 115
 9 Geo. IV., c. 61, s. 30, 117
 9 Geo. IV., c. 61, s. 35, 91
 9 Geo. IV., c. 61, s. 36, 92
 9 Geo. IV., c. 61, s. 37, 94
 9 Geo. IV., c. 68, 779
 9 Geo. IV., c. 69, s. 2, 288
 9 Geo. IV., c. 71, ss. 27, 28, 358, 1400
 10 Geo. IV., c. 7, s. 1, 1405, 1407
 10 Geo. IV., c. 26, 752
 10 Geo. IV., c. 34, s. 23, 7
 10 Geo. IV., c. 34, s. 34, 48
 10 Geo. IV., c. 44, 366
 10 Geo. IV., c. 44, s. 6, 123
 10 Geo. IV., c. 44, s. 9, 369
 10 Geo. IV., c. 124, 797
 11 Geo. IV. & 1 Will. IV., c. 64, 93, 133
 11 Geo. IV. & 1 Will. IV., c. 64, s. 14, 1109

- 11 Geo. IV. & 1 Will. IV., c. 64, s. 15, 86
 11 Geo. IV. & 1 Will. IV., c. 64, s. 16, 87
 11 Geo. IV. & 1 Will. IV., c. 64, s. 17, 88
 11 Geo. IV. & 1 Will. IV., c. 64, s. 18, 89
 11 Geo. IV. & 1 Will. IV., c. 64, s. 21, 89
 11 Geo. IV. & 1 Will. IV., c. 64, s. 22, 90
 11 Geo. IV. & 1 Will. IV., c. 64, s. 25, 86
 11 Geo. IV. & 1 Will. IV., c. 64, s. 26, 87
 11 Geo. IV. & 1 Will. IV., c. 64, s. 27, 87
 11 Geo. IV. & 1 Will. IV., c. 64, s. 28, 90
 11 Geo. IV. & 1 Will. IV., c. 66, ss. 3, 10, 166
 11 Geo. IV. & 1 Will. IV., c. 66, s. 21, 761
 11 Geo. IV. & 1 Will. IV., c. 70, 773
 11 Geo. IV. & 1 Will. IV., c. 70, s. 4, 648
 11 Geo. IV. & 1 Will. IV., c. 70, s. 9, 168
 11 Geo. IV. & 1 Will. IV., c. 64, s. 1, 68
 11 Geo. IV. & 1 Will. IV., c. 64, s. 2, 68, 70
 11 Geo. IV. & 1 Will. IV., c. 64, s. 6, 78
 11 Geo. IV. & 1 Will. IV., c. 64, s. 7, 68
 11 Geo. IV. & 1 Will. IV., c. 64, s. 11, 78
 11 Geo. IV. & 1 Will. IV., c. 64, s. 13, 81
 11 Geo. IV. & 1 Will. IV., c. 64, s. 14, 79
 11 Geo. IV. & 1 Will. IV., c. 64, s. 16, 78
 11 Geo. IV. & 1 Will. IV., c. 64, s. 23, 85
 11 Geo. IV. & 1 Will. IV., c. 64, s. 24, 85
 11 Geo. IV. & 1 Will. IV., c. 64, s. 30, 76
 11 Geo. IV. & 1 Will. IV., c. 64, s. 32, 65
 11 Geo. IV. & 1 Will. IV., c. 66, s. 27, 47
 11 Geo. IV. & 1 Will. IV., c. 70, 339
 11 Geo. IV. & 1 Will. IV., c. 76, 1408, n.
 1 & 2 Will. IV., c. 4, s. 11, 334
 1 & 2 Will. IV., c. 32, 872, 1117, 1120, 1143
 1 & 2 Will. IV., c. 32, s. 30, 653, 879, 1154
 1 & 2 Will. IV., c. 32, s. 31, 288
 1 & 2 Will. IV., c. 32, s. 43, 1163
 1 & 2 Will. IV., c. 32, s. 60, 1106
 1 & 2 Will. IV., c. 38, 686, 740
 1 & 2 Will. IV., c. 38, s. 4, 697
 1 & 2 Will. IV., c. 38, s. 14, 731
 1 & 2 Will. IV., c. 38, s. 16, 739
 1 & 2 Will. IV., c. 38, s. 25, 747
 1 & 2 Will. IV., c. 38, s. 26, 748
 1 & 2 Will. IV., c. 41, ss. 1, 2, 20, 1062
 1 & 2 Will. IV., c. 41, ss. 3, 4, 5, 6, 7, 1063
 1 & 2 Will. IV., c. 41, ss. 8, 9, 10, 11, 12, 1064
 1 & 2 Will. IV., c. 41, ss. 13, 14, 15, 1065
 1 & 2 Will. IV., c. 41, ss. 16, 17, 18, 1066
 1 & 2 Will. IV., c. 41, ss. 19, 22, 1067
 1 & 2 Will. IV., c. 45, s. 21, 740
 1 & 2 Will. IV., c. 59, 746
 1 & 2 Will. IV., c. 60, 444
 1 & 2 Will. IV., c. 74, 798
 1 & 2 Will. IV., c. 76, ss. 2, 3, 4, 5, 6, 19, 779
 1 & 2 Will. IV., c. 76, ss. 20, 21, 32, 33, 780
 1 & 2 Will. IV., c. 76, ss. 34, 43, 45, 47, 48, 781
 1 & 2 Will. IV., c. 76, ss. 49, 50, 782
 1 & 2 Will. IV., c. 76, ss. 51, 52, 53, 54, 783
 1 & 2 Will. IV., c. 76, ss. 55, 56, 57, 784
 1 & 2 Will. IV., c. 76, ss. 58, 59, 785
 1 & 2 Will. IV., c. 76, ss. 60, 68, 69, 70, 71, 72, 786
 1 & 2 Will. IV., c. 76, ss. 73, 74, 787
 1 & 2 Will. IV., c. 76, s. 75, 788
 1 & 2 Will. IV., c. 76, ss. 76, 77, 789
 1 & 2 Will. IV., c. 76, ss. 78, 79, 80, 81, 790
 1 & 2 Will. IV., c. 76, ss. 82, 83, 791
 1 & 2 Will. IV., c. 76, ss. 84, 85, 86, 87, 88, 792
 1 & 2 Will. IV., c. 76, ss. 89, 91, 793
 2 Will. IV., c. 8, 639
 2 Will. IV., c. 16, 104
 2 Will. IV., c. 42, ss. 2, 3, 4, 5, 6, 1338
 2 Will. IV., c. 42, ss. 7, 8, 9, 10, 11, 1339
 2 Will. IV., c. 47, 339
 2 & 3 Will. IV., c. 34, s. 20, 48
 2 & 3 Will. IV., c. 64, 503, 1307, 1371
 2 & 3 Will. IV., c. 75, s. 1, 468
 2 & 3 Will. IV., c. 75, ss. 2, 3, 4, 5, 6, 7, 469
 2 & 3 Will. IV., c. 75, ss. 8, 9, 10, 11, 470
 2 & 3 Will. IV., c. 75, ss. 12, 13, 14, 15, 16, 17, 18, 19, 471
 2 & 3 Will. IV., c. 114, 398
 3 & 4 Will. IV., c. 27, s. 36, 334
 3 & 4 Will. IV., c. 30, 714
 3 & 4 Will. IV., c. 31, 1248
 3 & 4 Will. IV., c. 35, s. 1, 918
 3 & 4 Will. IV., c. 35, s. 2, 919
 3 & 4 Will. IV., c. 35, ss. 3, 4, 5, 911
 3 & 4 Will. IV., c. 40, 1120
 3 & 4 Will. IV., c. 42, s. 39, 361
 3 & 4 Will. IV., c. 49, 1224
 3 & 4 Will. IV., c. 50, 1120
 3 & 4 Will. IV., c. 51, s. 8, 498
 3 & 4 Will. IV., c. 51, s. 12, 736
 3 & 4 Will. IV., c. 53, 874, 880, 1115, 1143
 3 & 4 Will. IV., c. 53, s. 53, 290
 3 & 4 Will. IV., c. 55, s. 27, 1118
 3 & 4 Will. IV., c. 71, s. 3, 337
 3 & 4 Will. IV., c. 71, ss. 3, 4, 338
 3 & 4 Will. IV., c. 76, 415, 416
 3 & 4 Will. IV., c. 85, s. 11, 66
 3 & 4 Will. IV., c. 87, ss. 1, 2, 907
 3 & 4 Will. IV., c. 87, ss. 3, 4, 5, 908
 3 & 4 Will. IV., c. 90, 298, 1056
 3 & 4 Will. IV., c. 90, s. 41, 334
 3 & 4 Will. IV., c. 90, ss. 41, 42, 298
 3 & 4 Will. IV., c. 90, s. 55, 289
 3 & 4 Will. IV., c. 99, s. 45, 771
 4 & 5 Will. IV., c. 13, 874
 4 & 5 Will. IV., c. 27, s. 1, 848
 4 & 5 Will. IV., c. 27, ss. 2, 3, 849
 4 & 5 Will. IV., c. 30, ss. 12, 13, 14, 889
 4 & 5 Will. IV., c. 30, s. 15, 890
 4 & 5 Will. IV., c. 36, s. 2, 606
 4 & 5 Will. IV., c. 36, s. 3, 4, 5, 607
 4 & 5 Will. IV., c. 36, ss. 6, 7, 8, 9, 608
 4 & 5 Will. IV., c. 36, ss. 10, 11, 12, 609
 4 & 5 Will. IV., c. 36, s. 12, 1322
 4 & 5 Will. IV., c. 36, s. 13, 615
 4 & 5 Will. IV., c. 36, ss. 13, 14, 15, 16, 610
 4 & 5 Will. IV., c. 36, ss. 17, 18, 611
 4 & 5 Will. IV., c. 36, s. 22, 45, 60
 4 & 5 Will. IV., c. 51, 76, 93
 4 & 5 Will. IV., c. 76, 226, 234, 334
 4 & 5 Will. IV., c. 76, s. 13, 72, 261
 4 & 5 Will. IV., c. 76, s. 47, 274, n.
 4 & 5 Will. IV., c. 76, s. 71, 407, 408
 4 & 5 Will. IV., c. 76, s. 72, 1153
 4 & 5 Will. IV., c. 76, s. 76, 1024
 4 & 5 Will. IV., c. 76, ss. 79, 81, 227

- 4 & 5 Will. IV., c. 76, s. 81, 228, 253, 619
 4 & 5 Will. IV., c. 76, s. 82, 1145
 4 & 5 Will. IV., c. 76, s. 92, 290
 4 & 5 Will. IV., c. 76, s. 93, 310
 4 & 5 Will. IV., c. 76, s. 97, 1121
 4 & 5 Will. IV., c. 76, s. 105, 622
 4 & 5 Will. IV., c. 77, 106
 4 & 5 Will. IV., c. 85, 67, 1109
 4 & 5 Will. IV., c. 85, s. 1, 71
 4 & 5 Will. IV., c. 85, s. 2, 71
 4 & 5 Will. IV., c. 85, s. 3, 72
 4 & 5 Will. IV., c. 85, s. 4, 82
 4 & 5 Will. IV., c. 85, s. 5, 130
 4 & 5 Will. IV., c. 85, s. 6, 79
 4 & 5 Will. IV., c. 85, s. 7, 80
 4 & 5 Will. IV., c. 85, s. 8, 72, 77, 1101
 4 & 5 Will. IV., c. 85, s. 9, 72
 4 & 5 Will. IV., c. 85, s. 12, 66
 4 & 5 Will. IV., c. 85, s. 15, 76
 4 & 5 Will. IV., c. 85, s. 16, 84
 4 & 5 Will. IV., c. 85, s. 17, 82
 4 & 5 Will. IV., c. 85, s. 18, 78
 4 & 5 Will. IV., c. 85, s. 19, 65, 83
 4 & 5 Will. IV., c. 85, s. 20, 84
 4 & 5 Will. IV., c. 85, s. 21, 72, 72, n.
 4 & 5 Will. IV., c. 85, s. 22, 85
 4 & 5 Will. IV., c. 86, s. 11, 375
 5 & 6 Will. IV., c. 20, s. 21, 1155
 5 & 6 Will. IV., c. 33, 610, n.
 5 & 6 Will. IV., c. 33, s. 1, 623
 5 & 6 Will. IV., c. 33, s. 2, 633
 5 & 6 Will. IV., c. 36, ss. 19, 20, 612
 5 & 6 Will. IV., c. 36, ss. 21, 22, 613
 5 & 6 Will. IV., c. 36, s. 22, 35
 5 & 6 Will. IV., c. 36, s. 23, 614
 5 & 6 Will. IV., c. 36, s. 113, 1322
 5 & 6 Will. IV., c. 38, 1306
 5 & 6 Will. IV., c. 38, s. 3, 850
 5 & 6 Will. IV., c. 38, ss. 3, 4, 869
 5 & 6 Will. IV., c. 38, ss. 13, 14, 608
 5 & 6 Will. IV., c. 50, 245, 289, 538, 688
 5 & 6 Will. IV., c. 50, s. 1, 532
 5 & 6 Will. IV., c. 50, s. 21, 514
 5 & 6 Will. IV., c. 50, s. 22, 517, 538
 5 & 6 Will. IV., c. 50, s. 73, 1138
 5 & 6 Will. IV., c. 50, s. 78, 1104, 1112
 5 & 6 Will. IV., c. 50, s. 88, 240, 255
 5 & 6 Will. IV., c. 50, s. 90, 1156
 5 & 6 Will. IV., c. 50, s. 95, 618
 5 & 6 Will. IV., c. 50, s. 101, 1110
 5 & 6 Will. IV., c. 54, ss. 1, 2, 451
 5 & 6 Will. IV., c. 59, 208, 210
 5 & 6 Will. IV., c. 59, s. 2, 208
 5 & 6 Will. IV., c. 62, 742
 5 & 6 Will. IV., c. 62, s. 9, 743, 757
 5 & 6 Will. IV., c. 63, s. 9, 778
 5 & 6 Will. IV., c. 69, 746, 1339
 5 & 6 Will. IV., c. 74, 719, 724
 5 & 6 Will. IV., c. 76, 503, 509, 1057, 1248
 5 & 6 Will. IV., c. 76, ss. 2, 5, 6, 7, 8, 1249
 5 & 6 Will. IV., c. 76, s. 9, 1250
 5 & 6 Will. IV., c. 76, ss. 10, 11, 1252
 5 & 6 Will. IV., c. 76, ss. 13, 14, 15, 1253
 5 & 6 Will. IV., c. 76, ss. 16, 17, 1255
 5 & 6 Will. IV., c. 76, s. 18, 1256
 5 & 6 Will. IV., c. 76, ss. 19, 21, 22, 1257
 5 & 6 Will. IV., c. 76, s. 23, 1258
 5 & 6 Will. IV., c. 76, s. 23, 759
 5 & 6 Will. IV., c. 76, ss. 34, 54, 1260
 5 & 6 Will. IV., c. 76, s. 39, 1262
 5 & 6 Will. IV., c. 76, ss. 40, 41, 42, 1263
 5 & 6 Will. IV., c. 76, s. 43, 1264
 5 & 6 Will. IV., c. 76, s. 48, 1265
 5 & 6 Will. IV., c. 76, ss. 49, 57, 1266
 5 & 6 Will. IV., c. 76, ss. 55, 56, 1261
 5 & 6 Will. IV., c. 76, ss. 58, 59, 60, 1267
 5 & 6 Will. IV., c. 76, s. 60, 871, 872, 878
 5 & 5 Will. IV., c. 76, s. 62, 1205, 1234
 5 & 6 Will. IV., c. 76, ss. 62, 65, 66, 67, 69, 1269
 5 & 6 Will. IV., c. 76, s. 63, 1233
 5 & 6 Will. IV., c. 76, ss. 70, 76, 77, 1270
 5 & 6 Will. IV., c. 76, ss. 78, 79, 80, 81, 1271
 5 & 6 Will. IV., c. 76, s. 76, 1068
 5 & 6 Will. IV., c. 76, ss. 77, 78, 79, 1069
 5 & 6 Will. IV., c. 76, ss. 78, 79, 1017
 5 & 6 Will. IV., c. 76, s. 79, 369
 5 & 6 Will. IV., c. 76, s. 81, 334, 1136
 5 & 6 Will. IV., c. 76, ss. 80, 81, 82, 1070
 5 & 6 Will. IV., c. 76, ss. 82, 83, 84, 1272
 5 & 6 Will. IV., c. 76, s. 83, 1065
 5 & 6 Will. IV., c. 76, ss. 83, 84, 1071
 5 & 6 Will. IV., c. 76, ss. 85, 86, 133, 1072
 5 & 6 Will. IV., c. 76, ss. 85, 86, 1273
 5 & 6 Will. IV., c. 76, ss. 87, 88, 89, 1274
 5 & 6 Will. IV., c. 76, s. 89, 1073
 5 & 6 Will. IV., c. 76, s. 90, 1275
 5 & 6 Will. IV., c. 76, ss. 91, 92, 1276
 5 & 6 Will. IV., c. 76, ss. 93, 94, 95, 96, 97, 98, 1291
 5 & 6 Will. IV., c. 76, ss. 99, 100, 101, 1292
 5 & 6 Will. IV., c. 76, ss. 101, 111, 112, 1370
 5 & 6 Will. IV., c. 76, s. 102, 1295
 5 & 6 Will. IV., c. 76, s. 103, 1296
 5 & 6 Will. IV., c. 76, ss. 103-105, 268
 5 & 6 Will. IV., c. 76, ss. 104, 105, 1298
 5 & 6 Will. IV., c. 76, s. 105, 115
 5 & 6 Will. IV., c. 76, ss. 110, 111, 1302
 5 & 6 Will. IV., c. 76, ss. 112, 113, 114, 1303
 5 & 6 Will. IV., c. 76, s. 115, 1304
 5 & 6 Will. IV., c. 76, s. 116, 1305
 5 & 6 Will. IV., c. 76, s. 117, 1306
 5 & 6 Will. IV., c. 76, s. 121, 1307
 5 & 6 Will. IV., c. 76, ss. 122, 123, 124, 1308
 5 & 6 Will. IV., c. 76, ss. 125, 126, 127, 1309
 5 & 6 Will. IV., c. 76, ss. 128, 129, 130, 1310
 5 & 6 Will. IV., c. 76, ss. 131, 132, 133, 1311
 5 & 6 Will. IV., c. 76, s. 134, 1312
 5 & 6 Will. IV., c. 76, ss. 135, 142, 1313
 6 Will. IV., c. 11, 150
 6 Will. IV., c. 11, ss. 2, 3, 4, 5, 150
 6 Will. IV., c. 11, ss. 6, 7, 8, 9, 10, 151
 6 Will. IV., c. 11, ss. 11, 12, 252
 6 & 7 Will. IV., c. 37, 485
 6 & 7 Will. IV., c. 37, ss. 2, 3, 4, 5, 486
 6 & 7 Will. IV., c. 37, ss. 6, 7, 8, 487
 6 & 7 Will. IV., c. 37, ss. 7, 15, 385
 6 & 7 Will. IV., c. 37, ss. 9, 10, 11, 488
 6 & 7 Will. IV., c. 37, s. 12, 489
 6 & 7 Will. IV., c. 37, s. 13, 490
 6 & 7 Will. IV., c. 37, s. 14, 491

- 6 & 7 Will. IV., c. 37, ss. 15, 16, 17, 492
 6 & 7 Will. IV., c. 37, ss. 18, 19, 20, 493
 6 & 7 Will. IV., c. 37, ss. 21, 22, 23, 494
 6 & 7 Will. IV., c. 37, ss. 24, 25, 495
 6 & 7 Will. IV., c. 37, ss. 26, 27, 28, 29, 496
 6 & 7 Will. IV., c. 37, ss. 30, 31, 32, 33, 497
 6 & 7 Will. IV., c. 65, s. 9, 1110
 6 & 7 Will. IV., c. 85, 454, 740, 1401
 6 & 7 Will. IV., c. 85, s. 25, 455
 6 & 7 Will. IV., c. 86, 693
 6 & 7 Will. IV., c. 86, s. 31, 454
 6 & 7 Will. IV., c. 86, s. 38, 453
 6 & 7 Will. IV., c. 87, 503
 6 & 7 Will. IV., c. 89, 1219
 6 & 7 Will. IV., c. 89, ss. 2, 3, 4, 5, 1220
 6 & 7 Will. IV., c. 89, ss. 6, 7, 1221
 6 & 7 Will. IV., c. 103, 1249
 6 & 7 Will. IV., c. 104, s. 5, 1283
 6 & 7 Will. IV., c. 105, 849
 6 & 7 Will. IV., c. 105, s. 1, 1305
 6 & 7 Will. IV., c. 105, s. 6, 1211
 6 & 7 Will. IV., c. 105, s. 8, 1269
 6 & 7 Will. IV., c. 105, ss. 10, 11, 1312, n.
 6 & 7 Will. IV., c. 105, s. 18, 1299
 6 & 7 Will. IV., c. 115, 890, 909
 6 & 7 Will. IV., c. 115, s. 10, 911
 6 & 7 Will. IV., c. 115, ss. 11, 12, 13, 53, 912
 6 & 7 Will. IV., c. 115, s. 41, 908
 6 & 7 Will. IV., c. 115, ss. 43, 44, 909
 6 & 7 Will. IV., c. 115, ss. 50, 51, 52, 920
 6 & 7 Will. IV., c. 115, s. 56, 914
 7 Will. IV., c. 83, 771
 7 Will. IV. & 1 Vict., c. 19, 1299
 7 Will. IV. & 1 Vict., c. 23, 596, n.
 7 Will. IV. & 1 Vict., c. 30, s. 15, 345
 7 Will. IV. & 1 Vict., c. 45, s. 2, 707
 7 Will. IV. & 1 Vict., c. 53, s. 7, 503
 7 Will. IV. & 1 Vict., c. 68, 1217
 7 Will. IV. & 1 Vict., c. 68, ss. 2, 3, 4, 1218
 7 Will. IV. & 1 Vict., c. 76, s. 4, 1265
 7 Will. IV. & 1 Vict., c. 77, ss. 2, 3, 614
 7 Will. IV. & 1 Vict., c. 77, ss. 4, 5, 615
 7 Will. IV. & 1 Vict., c. 78, ss. 5, 6, 1258
 7 Will. IV. & 1 Vict., c. 78, ss. 8, 9, 1253
 7 Will. IV. & 1 Vict., c. 78, s. 17, 1237
 7 Will. IV. & 1 Vict., c. 78, s. 24, 1259
 7 Will. IV. & 1 Vict., c. 78, s. 29, 1285
 7 Will. IV. & 1 Vict., c. 78, ss. 30, 31, 1293
 7 Will. IV. & 1 Vict., c. 78, s. 36, 1307
 7 Will. IV. & 1 Vict., c. 78, s. 37, 1306
 7 Will. IV. & 1 Vict., c. 78, s. 44, 1311, n.
 7 Will. IV. & 1 Vict., c. 85, s. 6, 14
 7 Will. IV. & 1 Vict., c. 85, s. 11, 9
 7 Will. IV. & 1 Vict., c. 86, s. 4, 558
 7 Will. IV. & 1 Vict., c. 99, ss. 2, 3, 1300
 7 Will. IV. & 1 Vict., c. 99, s. 5, 322
 1 & 2 Vict., c. 23, 57
 1 & 2 Vict., c. 34, 1258
 1 & 2 Vict., c. 45, 369
 1 & 2 Vict., c. 45, s. 1, 633, 643
 1 & 2 Vict., c. 74, 925
 1 & 2 Vict., c. 80, 1067
 1 & 2 Vict., c. 80, ss. 2, 3, 1068
 1 & 2 Vict., c. 101, s. 2, 793
 1 & 2 Vict., c. 101, ss. 3, 4, 794
 1 & 2 Vict., c. 101, ss. 5, 6, 7, 8, 795
 1 & 2 Vict., c. 101, s. 11, 796
 1 & 2 Vict., c. 101, s. 13, 797
 1 & 2 Vict., c. 101, s. 16, 798
 1 & 2 Vict., c. 106, 686
 1 & 2 Vict., c. 107, 686
 1 & 2 Vict., c. 107, s. 16, 697
 2 & 3 Vict., c. 22, 336
 2 & 3 Vict., c. 23, s. 2, 1281
 2 & 3 Vict., c. 47, s. 18, 334
 2 & 3 Vict., c. 47, s. 41, 92
 2 & 3 Vict., c. 47, s. 42, 128
 2 & 3 Vict., c. 47, 297, 366, 368
 2 & 3 Vict., c. 47, ss. 54, 63, 291
 2 & 3 Vict., c. 47, [ss. 54, 63, 64, 65, 66, 297
 2 & 3 Vict., c. 47, s. 56, 1414
 2 & 3 Vict., c. 47, s. 61, 1415
 2 & 3 Vict., c. 49, 686
 2 & 3 Vict., c. 56, 1306
 2 & 3 Vict., c. 56, s. 4, 822
 2 & 3 Vict., c. 69, 340
 2 & 3 Vict., c. 71, 84, 366
 2 & 3 Vict., c. 71, s. 14, 367
 2 & 3 Vict., c. 71, s. 36, 366
 2 & 3 Vict., c. 71, s. 38, 1105
 2 & 3 Vict., c. 72, 338
 2 & 3 Vict., c. 93, 297, 1032
 2 & 3 Vict., c. 93, ss. 3, 12, 13, 14, 1047
 2 & 3 Vict., c. 93, s. 4, 1044
 2 & 3 Vict., c. 93, ss. 6, 7, 17, 1045
 2 & 3 Vict., c. 93, s. 8, 334
 2 & 3 Vict., c. 93, ss. 8, 9, 1050
 2 & 3 Vict., c. 93, s. 10, 1051
 2 & 3 Vict., c. 93, ss. 10, 11, 1052
 2 & 3 Vict., c. 93, ss. 15, 16, 1048
 2 & 3 Vict., c. 93, s. 19, 1037
 2 & 3 Vict., c. 93, ss. 20, 22, 23, 1041
 2 & 3 Vict., c. 93, ss. 24, 27, 1039
 2 & 3 Vict., c. 93, s. 25, 996
 2 & 3 Vict., c. 93, ss. 25, 26, 1056
 2 & 3 Vict., c. 93, s. 28, 1033
 2 & 3 Vict., c. 94, 291, 297
 2 & 3 Vict., c. 94, ss. 9, 13, 16, 31, 43, 367
 2 & 3 Vict., c. 94, ss. 20, 37, 368
 2 & 3 Vict., c. 94, s. 26, 129
 2 & 3 Vict., c. 94, s. 28, 123
 3 & 4 Vict., c. 23, 1232
 3 & 4 Vict., c. 31, 909
 3 & 4 Vict., c. 31, s. 2, 895
 3 & 4 Vict., c. 31, s. 3, 896
 3 & 4 Vict., c. 50, 289
 3 & 4 Vict., c. 50, 1077
 3 & 4 Vict., c. 50, ss. 2, 3, 4, 5, 6, 1078
 3 & 4 Vict., c. 50, s. 6, 334
 3 & 4 Vict., c. 50, ss. 7, 8, 9, 10, 11, 1079
 3 & 4 Vict., c. 50, s. 10, 289
 3 & 4 Vict., c. 50, ss. 12, 13, 14, 15, 16, 17, 1080
 3 & 4 Vict., c. 50, ss. 18, 19, 1081
 3 & 4 Vict., c. 50, s. 20, 1082
 3 & 4 Vict., c. 54, s. 3, 284
 3 & 4 Vict., c. 60, 686
 3 & 4 Vict., c. 61, s. 1, 68
 3 & 4 Vict., c. 61, s. 2, 72
 3 & 4 Vict., c. 61, s. 3, 73

3 & 4 Vict., c. 61, s. 4, 73
 3 & 4 Vict., c. 61, s. 5, 74
 3 & 4 Vict., c. 61, s. 6, 70, 74, 77
 3 & 4 Vict., c. 61, s. 7, 70, 77, 86
 3 & 4 Vict., c. 61, s. 8, 76
 3 & 4 Vict., c. 61, s. 10, 77, 84
 3 & 4 Vict., c. 61, ss. 11, 12, 80
 3 & 4 Vict., c. 61, s. 13, 83
 3 & 4 Vict., c. 61, s. 14, 79
 3 & 4 Vict., c. 61, s. 15, 78, 1116, 1154
 3 & 4 Vict., c. 61, s. 17
 3 & 4 Vict., c. 61, s. 18, 69
 3 & 4 Vict., c. 61, ss. 19, 20, 21, 66
 3 & 4 Vict., c. 61, s. 22, 67
 3 & 4 Vict., c. 84, 366
 3 & 4 Vict., c. 85, ss. 2, 3, 6, 681
 3 & 4 Vict., c. 85, ss. 7, 8, 9, 10, 682
 3 & 4 Vict., c. 85, ss. 11, 12, 683
 3 & 4 Vict., c. 86, s. 3, 760
 3 & 4 Vict., c. 88, s. 1, 1052
 3 & 4 Vict., c. 88, ss. 2, 14, 1039
 3 & 4 Vict., c. 88, s. 3, 1041
 3 & 4 Vict., c. 88, ss. 4, 5, 6, 1042
 3 & 4 Vict., c. 88, ss. 7, 8, 9, 1043
 3 & 4 Vict., c. 88, ss. 10, 11, 1053
 3 & 4 Vict., c. 88, s. 12, 1048
 3 & 4 Vict., c. 88, ss. 13, 31, 32, 1049
 3 & 4 Vict., c. 88, s. 15, 1040
 3 & 4 Vict., c. 88, s. 19, 1046
 3 & 4 Vict., c. 88, s. 20, 1056
 3 & 4 Vict., c. 88, ss. 21, 22, 23, 1058
 3 & 4 Vict., c. 88, s. 25, 1044
 3 & 4 Vict., c. 88, s. 26, 1045
 3 & 4 Vict., c. 88, ss. 27, 29, 1037
 3 & 4 Vict., c. 88, s. 28, 1038
 3 & 4 Vict., c. 88, s. 30, 1036
 3 & 4 Vict., c. 88, ss. 34, 35, 1034
 3 & 4 Vict., c. 88, s. 38, 1055
 3 & 4 Vict., c. 93, 725
 4 & 5 Vict., c. 48, 1247, 1290
 4 & 5 Vict., c. 49, 516, 527
 4 & 5 Vict., c. 49, s. 2, 528
 4 & 5 Vict., c. 49, ss. 3, 4, 529
 5 Vict., c. 14, ss. 7, 9, 10, 11, 1187
 5 Vict., c. 14, ss. 12, 13, 14, 1188
 5 Vict., c. 14, ss. 15, 16, 17, 1189
 5 Vict., c. 14, ss. 18, 19, 1190
 5 Vict., c. 14, ss. 20, 21, 22, 1191
 5 Vict., c. 14, ss. 23, 24, 1192
 5 Vict., c. 14, ss. 25, 33, 1193
 5 Vict., c. 14, ss. 39, 40, 1194
 5 Vict., c. 14, ss. 41, 42, 43, 44, 1195
 5 & 6 Vict., c. 38, 9, 611, 676, 811
 5 & 6 Vict., c. 38, s. 1, 8, 377, 389, 451, 539,
 562, 801, 807, 814, 985
 5 & 6 Vict., c. 39, 396
 5 & 6 Vict., c. 44, 98, 101
 5 & 6 Vict., c. 44, s. 2, 102
 5 & 6 Vict., c. 44, ss. 3, 4, 11, 103
 5 & 6 Vict., c. 44, s. 5, 129
 5 & 6 Vict., c. 45, ss. 2, 3, 6, 1167
 5 & 6 Vict., c. 45, ss. 7, 8, 9, 10, 11, 1168
 5 & 6 Vict., c. 45, ss. 12, 17, 24, 1169
 5 & 6 Vict., c. 45, ss. 26, 27, 1170
 5 & 6 Vict., c. 76, 1036
 5 & 6 Vict., c. 97, 484

5 & 6 Vict., c. 97, s. 2, 497, 523
 5 & 6 Vict., c. 97, s. 3, 757, 1028, 1409
 5 & 6 Vict., c. 98, 1304, 1371
 5 & 6 Vict., c. 99, 800
 5 & 6 Vict., c. 99, s. 4, 805
 5 & 6 Vict., c. 100, 1182
 5 & 6 Vict., c. 100, s. 2, 1170
 5 & 6 Vict., c. 100, s. 3, 1171
 5 & 6 Vict., c. 100, ss. 4, 5, 6, 1172
 5 & 6 Vict., c. 100, ss. 7, 8, 1173
 5 & 6 Vict., c. 100, ss. 11, 12, 13, 14, 15, 16,
 1175
 5 & 6 Vict., c. 109, 621, 996
 5 & 6 Vict., c. 109, ss. 1, 4, 1003
 5 & 6 Vict., c. 109, ss. 2, 3, 8, 9, 1004
 5 & 6 Vict., c. 109, s. 5, 998
 5 & 6 Vict., c. 109, ss. 6, 7, 999
 5 & 6 Vict., c. 109, ss. 11, 14, 16, 1005
 5 & 6 Vict., c. 109, s. 12, 1000
 5 & 6 Vict., c. 109, ss. 15, 17, 1012
 5 & 6 Vict., c. 109, ss. 18, 19, 20, 22, 1008
 5 & 6 Vict., c. 109, s. 21, 1002
 5 & 6 Vict., c. 109, s. 23, 1009
 5 & 6 Vict., c. 109, s. 24, 1015
 5 & 6 Vict., c. 111, 1298
 6 Vict., c. 18, s. 3, 772
 6 & 7 Vict., c. 12, 1208
 6 & 7 Vict., c. 12, s. 1, 1223
 6 & 7 Vict., c. 12, s. 2, 1218
 6 & 7 Vict., c. 12, ss. 2, 3, 1209, 1226
 6 & 7 Vict., c. 34, ss. 1, 2, 823
 6 & 7 Vict., c. 37, 686, 697, 763
 6 & 7 Vict., c. 37, s. 15, 740
 6 & 7 Vict., c. 37, s. 17, 739, 742, 744
 6 & 7 Vict., c. 65, ss. 2, 3, 4, 5, 6, 1176
 6 & 7 Vict., c. 68, s. 2, 863, 864
 6 & 7 Vict., c. 73, s. 2, 345
 6 & 7 Vict., c. 73, ss. 33, 34, 345
 6 & 7 Vict., c. 75, 854
 6 & 7 Vict., c. 75, s. 76, 157
 6 & 7 Vict., c. 82, s. 2, 1224
 6 & 7 Vict., c. 83, s. 1, 1210
 6 & 7 Vict., c. 83, s. 2, 1213, 1223
 6 & 7 Vict., c. 85, 397
 6 & 7 Vict., c. 89, ss. 7, 8, 1297
 6 & 7 Vict., c. 94, 829
 6 & 7 Vict., c. 94, ss. 2, 3, 4, 830
 6 & 7 Vict., c. 94, ss. 5, 7, 831
 6 & 7 Vict., c. 94, s. 8, 832
 6 & 7 Vict., c. 101, ss. 23, 24, 796
 6 & 7 Vict., c. 105, s. 3, 1298
 7 Vict., c. 2, s. 3, 50
 7 & 8 Vict., c. 2, s. 1, 45, 50, 1522
 7 & 8 Vict., c. 2, s. 4, 46
 7 & 8 Vict., c. 10, 408
 7 & 8 Vict., c. 12, 1170
 7 & 8 Vict., c. 15, 462
 7 & 8 Vict., c. 24, s. 1, 1183
 7 & 8 Vict., c. 33, 1344, 1360
 7 & 8 Vict., c. 33, s. 8, 995
 7 & 8 Vict., c. 52, ss. 2, 4, 1003
 7 & 8 Vict., c. 52, s. 3, 1012
 7 & 8 Vict., c. 59, ss. 2, 3, 4, 761
 7 & 8 Vict., c. 59, s. 5, 764
 7 & 8 Vict., c. 59, s. 6, 765
 7 & 8 Vict., c. 61, 503

- 7 & 8 Vict., c. 66, ss. 2, 3, 4, 152
 7 & 8 Vict., c. 66, ss. 5, 6, 7, 8, 9, 10, 153
 7 & 8 Vict., c. 66, ss. 11, 12, 13, 14, 15, 16, 154
 7 & 8 Vict., c. 87, s. 1, 198
 7 & 8 Vict., c. 87, s. 2, 199
 7 & 8 Vict., c. 87, s. 3, 205
 7 & 8 Vict., c. 87, ss. 4, 5, 6, 202
 7 & 8 Vict., c. 87, ss. 7, 8, 206
 7 & 8 Vict., c. 87, ss. 9, 10, 207
 7 & 8 Vict., c. 92, ss. 1, 2, 3, 1201
 7 & 8 Vict., c. 92, ss. 4, 5, 6, 7, 1202
 7 & 8 Vict., c. 92, ss. 8, 9, 10, 1203
 7 & 8 Vict., c. 92, ss. 11, 12, 13, 1204
 7 & 8 Vict., c. 92, ss. 14, 15, 16, 1205
 7 & 8 Vict., c. 92, s. 17, 1212
 7 & 8 Vict., c. 92, s. 18, 1215
 7 & 8 Vict., c. 92, ss. 18, 22, 1233
 7 & 8 Vict., c. 92, s. 20, 1210
 7 & 8 Vict., c. 92, ss. 24, 25, 26, 1219
 7 & 8 Vict., c. 93, 1250
 7 & 8 Vict., c. 94, 686, 697, 763
 7 & 8 Vict., c. 101, s. 2, 409
 7 & 8 Vict., c. 101, ss. 2, 8, 408
 7 & 8 Vict., c. 101, s. 3, 407, 410, 418
 7 & 8 Vict., c. 101, ss. 3, 4, 5, 7, 415
 7 & 8 Vict., c. 101, s. 4, 226, 236, 420
 7 & 8 Vict., c. 101, s. 5, 419
 7 & 8 Vict., c. 101, s. 10, 416
 7 & 8 Vict., c. 101, s. 31, 470
 7 & 8 Vict., c. 101, s. 68, 345
 7 & 8 Vict., c. 101, s. 70, 412
 8 Vict., c. 10, 408
 8 Vict., c. 10, s. 1, 416
 8 Vict., c. 10, s. 3, 236, 420
 8 Vict., c. 10, s. 6, 421
 8 Vict., c. 10, s. 7, 411
 8 Vict., c. 10, s. 11, 420
 8 Vict., c. 16, ss. 2, 3, 936
 8 Vict., c. 16, ss. 4, 6, 937
 8 Vict., c. 16, ss. 109, 110, 111, 112, 938
 8 Vict., c. 16, ss. 113, 114, 115, 116, 117, 118, 119, 939
 8 Vict., c. 16, ss. 124, 125, 126, 127, 142, 143, 940
 8 Vict., c. 16, ss. 144, 145, 146, 147, 941
 8 Vict., c. 16, ss. 148, 149, 150, 151, 152, 153, 154, 942
 8 Vict., c. 16, ss. 155, 156, 157, 158, 159, 160, 943
 8 Vict., c. 16, s. 161, 771
 8 Vict., c. 16, ss. 161, 162, 163, 944
 8 Vict., c. 18, s. 150, 771
 8 Vict., c. 20, s. 46, 507
 8 Vict., c. 20, s. 162, 772
 8 & 9 Vict., c. 10, s. 4, 409
 8 & 9 Vict., c. 18, s. 64, 915
 8 & 9 Vict., c. 18, s. 68, 619
 8 & 9 Vict., c. 70, s. 4, 697
 8 & 9 Vict., c. 70, s. 10, 693
 8 & 9 Vict., c. 70, s. 13, 686
 8 & 9 Vict., c. 87, ss. 2, 50, 1130
 8 & 9 Vict., c. 87, s. 103, 646
 8 & 9 Vict., c. 101, s. 1, 798
 8 & 9 Vict., c. 109, s. 10, 458
 8 & 9 Vict., c. 109, ss. 11, 12, 459
 8 & 9 Vict., c. 109, ss. 13, 14, 20, 460
 8 & 9 Vict., c. 109, s. 25, 461
 8 & 9 Vict., c. 110, s. 2, 1285
 8 & 9 Vict., c. 110, ss. 3, 4, 5, 1286
 8 & 9 Vict., c. 110, ss. 6, 7, 8, 1287
 8 & 9 Vict., c. 113, 398
 8 & 9 Vict., c. 114, 1330
 8 & 9 Vict., c. 118, 911
 8 & 9 Vict., c. 118, s. 8, 891
 8 & 9 Vict., c. 118, s. 38, 892
 8 & 9 Vict., c. 118, s. 39, 894
 8 & 9 Vict., c. 118, s. 42, 895
 8 & 9 Vict., c. 118, s. 62, 914
 8 & 9 Vict., c. 118, s. 63, 223, 915
 8 & 9 Vict., c. 118, s. 65, 901
 8 & 9 Vict., c. 118, s. 67, 902
 8 & 9 Vict., c. 118, ss. 72, 73, 902
 8 & 9 Vict., c. 118, s. 108, 902
 8 & 9 Vict., c. 118, ss. 109, 110, 904
 8 & 9 Vict., c. 118, ss. 111, 112, 905
 8 & 9 Vict., c. 118, ss. 117, 119, 921
 8 & 9 Vict., c. 118, s. 146, 910
 8 & 9 Vict., c. 118, ss. 151, 159, 165, 922
 8 & 9 Vict., c. 118, ss. 166, 167, 923
 8 & 9 Vict., c. 120, 157
 8 & 9 Vict., c. 126, 222, 1371
 8 & 9 Vict., c. 126, s. 62, 646
 9 & 10 Vict., c. 24, ss. 2, 3, 7, 615
 9 & 10 Vict., c. 24, s. 3, 617, 643
 9 & 10 Vict., c. 24, s. 4, 372
 9 & 10 Vict., c. 59, 1402
 9 & 10 Vict., c. 62, 1225, 1229, 1388
 9 & 10 Vict., c. 68, s. 39, 689
 9 & 10 Vict., c. 74, 435
 9 & 10 Vict., c. 74, ss. 3, 4, 5, 6, 436
 9 & 10 Vict., c. 74, ss. 7, 8, 9, 10, 11, 12, 437
 9 & 10 Vict., c. 74, ss. 13, 14, 15, 16, 17, 18, 438
 9 & 10 Vict., c. 74, ss. 19, 20, 21, 22, 439
 9 & 10 Vict., c. 74, ss. 23, 24, 25, 26, 440
 9 & 10 Vict., c. 74, ss. 26, 27, 28, 29, 441
 9 & 10 Vict., c. 74, ss. 30, 31, 32, 33, 34, 442
 9 & 10 Vict., c. 74, ss. 35, 37, 38, 39, 40, 42, 443
 9 & 10 Vict., c. 95, 763
 9 & 10 Vict., c. 95, s. 114, 288, 334
 10 Vict., c. 5, 121
 10 Vict., c. 16, 832
 10 Vict., c. 16, ss. 2, 3, 833
 10 Vict., c. 16, ss. 11, 12, 13, 27, 28, 834
 10 Vict., c. 16, ss. 31, 35, 55, 835
 10 Vict., c. 16, ss. 64, 65, 69, 70, 836
 10 Vict., c. 16, ss. 71, 72, 73, 74, 837
 10 Vict., c. 16, ss. 89, 90, 91, 92, 838
 10 Vict., c. 16, ss. 93, 94, 95, 839
 10 Vict., c. 16, ss. 96, 97, 98, 99, 100, 101, 103, 840
 10 Vict., c. 16, ss. 104, 105, 106, 108, 109, 841
 10 Vict., c. 16, ss. 110, 111, 842
 10 & 11 Vict., c. 14, s. 58, 772
 10 & 11 Vict., c. 15, s. 45, 772
 10 & 11 Vict., c. 16, s. 110, 772
 10 & 11 Vict., c. 17, s. 90, 772
 10 & 11 Vict., c. 61, s. 2, 444
 10 & 11 Vict., c. 61, s. 3, 436
 10 & 11 Vict., c. 61, s. 4, 439

- 10 & 11 Vict., c. 61, s. 5, 440
 10 & 11 Vict., c. 61, s. 6, 443
 10 & 11 Vict., c. 65, ss. 2, 3, 602
 10 & 11 Vict., c. 65, ss. 4, 5, 6, 603
 10 & 11 Vict., c. 65, ss. 7, 8, 26, 58, 59, 60, 604
 10 & 11 Vict., c. 65, ss. 62, 64, 65, 66, 67, 605
 10 & 11 Vict., c. 83, s. 3, 154
 10 & 11 Vict., c. 89, 123
 10 & 11 Vict., c. 89, s. 28, 1414
 10 & 11 Vict., c. 89, s. 29, 1115, 1136, 1431
 10 & 11 Vict., c. 89, s. 35, 1393
 10 & 11 Vict., c. 90, s. 19, 964
 11 Vict., c. 20, 155
 11 & 12 Vict., c. 3, 621
 11 & 12 Vict., c. 14, 1052
 11 & 12 Vict., c. 31, s. 4, 171
 11 & 12 Vict., c. 31, s. 6, 243, 646
 11 & 12 Vict., c. 31, s. 9, 227
 11 & 12 Vict., c. 37, 686
 11 & 12 Vict., c. 41, s. 23, 375
 11 & 12 Vict., c. 42, 280, 305, 362, 368, 375, 854
 11 & 12 Vict., c. 42, 883, 1332
 11 & 12 Vict., c. 42, s. 2, 50, 854
 11 & 12 Vict., c. 42, s. 3, 278
 11 & 12 Vict., c. 42, s. 4, 279
 11 & 12 Vict., c. 42, ss. 11, 12, 13, 14, 15, 365
 11 & 12 Vict., c. 42, s. 16, 867
 11 & 12 Vict., c. 42, s. 17, 21, 884
 11 & 12 Vict., c. 42, s. 20, 624, 868
 11 & 12 Vict., c. 42, s. 22, 365, 848
 11 & 12 Vict., c. 42, s. 23, 363, 374
 11 & 12 Vict., c. 42, s. 24, 375
 11 & 12 Vict., c. 42, s. 25, 51, 843, 850
 11 & 12 Vict., c. 42, s. 26, 856, 1328, 1375
 11 & 12 Vict., c. 42, s. 29, 366
 11 & 12 Vict., c. 42, s. 30, 367
 11 & 12 Vict., c. 42, ss. 222, 223, 396
 11 & 12 Vict., c. 43, 25, 110, 129, 157
 11 & 12 Vict., c. 43, 274, n., 305, 318, 361, 407, 393, n., 571, 848, 853, 906, 1330, 1376, 1413, 1431
 11 & 12 Vict., c. 43, ss. 3, 37, 368
 11 & 12 Vict., c. 43, ss. 3, 9, 844
 11 & 12 Vict., c. 43, s. 5, 30, 35
 11 & 12 Vict., c. 43, s. 7, 868
 11 & 12 Vict., c. 43, s. 10, 319, 346, 1109
 11 & 12 Vict., c. 43, s. 11, 106, 723, 1105
 11 & 12 Vict., c. 43, s. 12, 314
 11 & 12 Vict., c. 43, ss. 13, 16, 845
 11 & 12 Vict., c. 43, s. 14, 129, 598
 11 & 12 Vict., c. 43, s. 17, 110
 11 & 12 Vict., c. 43, ss. 17, 18, 19, 862
 11 & 12 Vict., c. 43, s. 20, 846, 863
 11 & 12 Vict., c. 43, ss. 21, 22, 864
 11 & 12 Vict., c. 43, s. 23, 865
 11 & 12 Vict., c. 43, ss. 23, 27, 880
 11 & 12 Vict., c. 43, s. 24, 871
 11 & 12 Vict., c. 43, ss. 24, 26, 27, 866
 11 & 12 Vict., c. 43, s. 25, 867
 11 & 12 Vict., c. 43, s. 27, 116, 260
 11 & 12 Vict., c. 43, s. 28, 882
 11 & 12 Vict., c. 43, s. 29, 869, 1107
 11 & 12 Vict., c. 43, s. 30, 774, 1331
 11 & 12 Vict., c. 43, s. 31, 883
 11 & 12 Vict., c. 43, s. 76, 26
 11 & 12 Vict., c. 44, 294, 627, 721
 11 & 12 Vict., c. 44, s. 2, 846
 11 & 12 Vict., c. 44, s. 3, 869
 11 & 12 Vict., c. 44, s. 5, 1108
 11 & 12 Vict., c. 44, s. 6, 243, 867
 11 & 12 Vict., c. 44, s. 8, 294
 11 & 12 Vict., c. 44, ss. 8, 9, 10, 117
 11 & 12 Vict., c. 46, s. 1, 29
 11 & 12 Vict., c. 46, s. 4, 164
 11 & 12 Vict., c. 47, 79
 11 & 12 Vict., c. 49, ss. 1, 4, 5, 6, 126
 11 & 12 Vict., c. 49, s. 1, 43, 128
 11 & 12 Vict., c. 63, 1143
 11 & 12 Vict., c. 63, s. 64, 500
 11 & 12 Vict., c. 78, 172, 268, 616, 1386
 11 & 12 Vict., c. 78, s. 2, 168, 269
 11 & 12 Vict., c. 78, ss. 2, 6, 272
 11 & 12 Vict., c. 92, 238
 11 & 12 Vict., c. 99, s. 6, 923
 11 & 12 Vict., c. 99, s. 10, 924
 11 & 12 Vict., c. 101, ss. 2, 3, 1010
 11 & 12 Vict., c. 101, ss. 4, 5, 6, 7, 1011
 11 & 12 Vict., c. 105, ss. 1, 2, 3, 4, 5, 175
 11 & 12 Vict., c. 107, 176, 177, 196
 11 & 12 Vict., c. 107, s. 2, 176
 11 & 12 Vict., c. 107, s. 3, 177
 11 & 12 Vict., c. 107, s. 4, 178
 11 & 12 Vict., c. 107, s. 6, 180
 11 & 12 Vict., c. 107, s. 7, 179, 190
 11 & 12 Vict., c. 107, s. 17, 192
 11 & 12 Vict., c. 107, s. 18, 192
 12 Vict., c. 14, 724
 12 Vict., c. 18, 1248
 12 Vict., c. 18, s. 1, 410
 12 & 13 Vict., c. 8, ss. 1, 2, 3, 4, 1290
 12 & 13 Vict., c. 14, 879
 12 & 13 Vict., c. 15, s. 9, 237
 12 & 13 Vict., c. 18, 1290
 12 & 13 Vict., c. 45, 617
 12 & 13 Vict., c. 45, s. 1, 230
 12 & 13 Vict., c. 45, ss. 1, 2, 229
 12 & 13 Vict., c. 45, ss. 3, 4, 9, 234
 12 & 13 Vict., c. 45, ss. 3, 8, 170
 12 & 13 Vict., c. 45, s. 4, 6, 7, 9, 171
 12 & 13 Vict., c. 45, s. 5, 116, 257, 258, 260
 12 & 13 Vict., c. 45, ss. 6, 13, 259
 12 & 13 Vict., c. 45, s. 7, 111, 169, 640
 12 & 13 Vict., c. 45, ss. 7, 9, 243
 12 & 13 Vict., c. 45, s. 8, 236
 12 & 13 Vict., c. 45, s. 9, 250
 12 & 13 Vict., c. 45, s. 10, 171
 12 & 13 Vict., c. 45, s. 12, 360
 12 & 13 Vict., c. 45, ss. 12, 13, 248
 12 & 13 Vict., c. 45, ss. 14, 15, 16, 249, 361
 12 & 13 Vict., c. 45, s. 18, 261, 628
 12 & 13 Vict., c. 64, 1248
 12 & 13 Vict., c. 64, ss. 1, 2, 1290
 12 & 13 Vict., c. 65, s. 1, 1287
 12 & 13 Vict., c. 65, ss. 2, 3, 1288
 12 & 13 Vict., c. 65, ss. 4, 5, 6, 1289
 12 & 13 Vict., c. 82, 1371
 12 & 13 Vict., c. 82, s. 2, 1373
 12 & 13 Vict., c. 82, ss. 4, 5, 1372
 12 & 13 Vict., c. 83, 896
 12 & 13 Vict., c. 83, s. 10, 924
 12 & 13 Vict., c. 92, 208, 209, 221, 334, 1415

- 12 & 13 Vict., c. 92, ss. 2, 3, 208
 12 & 13 Vict., c. 92, ss. 4, 5, 6, 209
 12 & 13 Vict., c. 92, ss. 7, 11, 199
 12 & 13 Vict., c. 92, ss. 8, 9, 205
 12 & 13 Vict., c. 92, s. 10, 200
 12 & 13 Vict., c. 92, ss. 12, 13, 210
 12 & 13 Vict., c. 92, ss. 14, 15, 16, 17, 211
 12 & 13 Vict., c. 92, ss. 18, 19, 20, 21, 22, 212
 12 & 13 Vict., c. 92, ss. 23, 24, 25, 213
 12 & 13 Vict., c. 92, ss. 26, 27, 214
 12 & 13 Vict., c. 92, ss. 28, 29, 215
 12 & 13 Vict., c. 92, s. 30, 216
 12 & 13 Vict., c. 96, s. 3, 49
 12 & 13 Vict., c. 103, s. 9, 1105
 12 & 13 Vict., c. 106, ss. 70, 72, 86, 251, 392
 12 & 13 Vict., c. 106, s. 117, 390
 12 & 13 Vict., c. 106, ss. 117, 260, 391
 12 & 13 Vict., c. 106, s. 117, 964
 12 & 13 Vict., c. 106, s. 233, 396
 12 & 13 Vict., c. 106, ss. 236, 240, 241, 242, 397
 12 & 13 Vict., c. 106, s. 252, 394
 12 & 13 Vict., c. 106, ss. 254, 272, 273, 398
 12 & 13 Vict., c. 111, 385
 13 & 14 Vict., c. 20, s. 3, 1008
 13 & 14 Vict., c. 20, s. 4, 1003
 13 & 14 Vict., c. 20, s. 5, 999
 13 & 14 Vict., c. 20, ss. 6, 7, 8, 1009
 13 & 14 Vict., c. 21, 1106
 13 & 14 Vict., c. 25, 336
 13 & 14 Vict., c. 60, s. 46, 341
 13 & 14 Vict., c. 60, s. 47, 342
 13 & 14 Vict., c. 64, 542
 13 & 14 Vict., c. 64, s. 1, 509
 13 & 14 Vict., c. 64, ss. 2, 3, 543
 13 & 14 Vict., c. 64, ss. 4, 5, 544
 13 & 14 Vict., c. 64, s. 5, 511
 13 & 14 Vict., c. 91, 1293
 13 & 14 Vict., c. 91, s. 1, 849
 13 & 14 Vict., c. 91, ss. 2, 3, 4, 5, 1294
 13 & 14 Vict., c. 91, ss. 6, 7, 8, 9, 10, 1295
 13 & 14 Vict., c. 101, s. 9, 334, 1323
 13 & 14 Vict., c. 104, ss. 1, 2, 3, 4, 1178
 13 & 14 Vict., c. 104, ss. 5, 6, 7, 8, 9, 1179
 13 & 14 Vict., c. 104, ss. 10, 11, 12, 13, 14, 1180
 13 & 14 Vict., c. 104, ss. 15, 16, 1181
 14 & 15 Vict., c. 12, ss. 1, 4, 306
 14 & 15 Vict., c. 12, ss. 2, 3, 307
 14 & 15 Vict., c. 19, ss. 11, 13, 290
 14 & 15 Vict., c. 19, ss. 12, 14, 1326
 14 & 15 Vict., c. 19, s. 15, 564
 14 & 15 Vict., c. 55, ss. 1, 2, 1316
 14 & 15 Vict., c. 55, s. 2, 992
 14 & 15 Vict., c. 55, ss. 4, 5, 1318
 14 & 15 Vict., c. 55, s. 9, 775
 14 & 15 Vict., c. 55, s. 10, 776
 14 & 15 Vict., c. 55, ss. 11, 12, 777
 14 & 15 Vict., c. 55, s. 13, 611
 14 & 15 Vict., c. 55, s. 19, 850
 14 & 15 Vict., c. 55, ss. 19, 20, 21, 850
 14 & 15 Vict., c. 55, ss. 19, 23, 24, 1323
 14 & 15 Vict., c. 93, 318
 14 & 15 Vict., c. 93, ss. 2, 9, 386
 14 & 15 Vict., c. 97, 686, 726
 14 & 15 Vict., c. 99, 537
 14 & 15 Vict., c. 99, s. 2, 406, 422
 14 & 15 Vict., c. 99, ss. 2, 3, 410
 14 & 15 Vict., c. 99, s. 6, 709
 14 & 15 Vict., c. 99, s. 13, 357
 14 & 15 Vict., c. 99, s. 14, 453, 455
 14 & 15 Vict., c. 100, 172, 562
 14 & 15 Vict., c. 100, s. 1, 164, 804, 1229
 14 & 15 Vict., c. 100, s. 3, 165
 14 & 15 Vict., c. 100, s. 9, 344, 563
 14 & 15 Vict., c. 100, ss. 9, 12, 350
 14 & 15 Vict., c. 100, s. 19, 1323
 14 & 15 Vict., c. 100, ss. 23, 24, 1230
 14 & 15 Vict., c. 100, ss. 24, 25, 1385
 14 & 15 Vict., c. 100, s. 25, 166
 14 & 15 Vict., c. 100, s. 28, 352
 14 & 15 Vict., c. 100, s. 29, 991
 14 & 15 Vict., c. 100, s. 30, 1231
 14 & 15 Vict., c. 105, s. 18, 334
 14 & 15 Vict., c. 146, 799
 14 & 15 Vict., c. 146, s. 28, 798
 15 & 16 Vict., c. 12, 1170
 15 & 16 Vict., c. 36, 1401, 1402
 15 & 16 Vict., c. 38, 1291
 15 & 16 Vict., c. 57, s. 8, 964
 15 & 16 Vict., c. 76, s. 104, 335
 15 & 16 Vict., c. 79, ss. 13, 33, 925
 15 & 16 Vict., c. 79, ss. 17, 22, 910
 15 & 16 Vict., c. 79, s. 27, 911
 15 & 16 Vict., c. 79, s. 28, 896
 15 & 16 Vict., c. 81, s. 1, 1343
 15 & 16 Vict., c. 81, s. 2, 1344
 15 & 16 Vict., c. 81, ss. 3, 4, 5, 6, 7, 1345
 15 & 16 Vict., c. 81, ss. 8, 9, 1346
 15 & 16 Vict., c. 81, ss. 10, 11, 12, 13, 1347
 15 & 16 Vict., c. 81, ss. 14, 15, 1348
 15 & 16 Vict., c. 81, ss. 16, 17, 1349
 15 & 16 Vict., c. 81, ss. 18, 19, 20, 1350
 15 & 16 Vict., c. 81, s. 21, 1351
 15 & 16 Vict., c. 81, s. 22, 1352
 15 & 16 Vict., c. 81, s. 23, 1353
 15 & 16 Vict., c. 81, ss. 24, 25, 26, 1354
 15 & 16 Vict., c. 81, ss. 27, 28, 29, 1355
 15 & 16 Vict., c. 81, ss. 30, 31, 1356
 15 & 16 Vict., c. 81, s. 32, 1357
 15 & 16 Vict., c. 81, ss. 33, 34, 35, 1358
 15 & 16 Vict., c. 81, ss. 36, 37, 1359
 15 & 16 Vict., c. 81, ss. 38, 39, 1360
 15 & 16 Vict., c. 81, s. 40, 1361
 15 & 16 Vict., c. 81, ss. 41, 42, 1362
 15 & 16 Vict., c. 81, ss. 43, 47, 48, 49, 50, 1363
 15 & 16 Vict., c. 81, ss. 44, 45, 46, 1364
 15 & 16 Vict., c. 81, s. 50, 1374
 15 & 16 Vict., c. 81, s. 51, 1365
 15 & 16 Vict., c. 81, s. 52, 1369
 15 & 16 Vict., c. 85, s. 10, 568, 574
 15 & 16 Vict., c. 85, s. 11, 574
 15 & 16 Vict., c. 85, s. 12, 575
 15 & 16 Vict., c. 85, ss. 13, 14, 15, 18, 578
 15 & 16 Vict., c. 85, s. 16, 586
 15 & 16 Vict., c. 85, s. 17, 587
 15 & 16 Vict., c. 85, s. 19, 576
 15 & 16 Vict., c. 85, ss. 20, 21, 22, 580
 15 & 16 Vict., c. 85, s. 23, 570, 581
 15 & 16 Vict., c. 85, ss. 23, 30, 32, 570
 15 & 16 Vict., c. 85, ss. 24, 25, 26, 27, 28, 29, 583

- 15 & 16 Vict., c. 85, ss. 31, 33, 34, 568, 585
 15 & 16 Vict., c. 85, ss. 36, 44, 50, 571
 15 & 16 Vict., c. 85, ss. 37, 38, 40, 41, 42, 586
 15 & 16 Vict., c. 85, s. 39, 581
 15 & 16 Vict., c. 85, s. 40, 566
 15 & 16 Vict., c. 85, s. 44, 691
 15 & 16 Vict., c. 85, s. 51, 572
 16 & 17 Vict., c. 30, 358, 1137
 16 & 17 Vict., c. 30, s. 1, 870
 16 & 17 Vict., c. 30, s. 4, 617
 16 & 17 Vict., c. 30, s. 5, 635
 16 & 17 Vict., c. 30, ss. 5, 6, 659
 16 & 17 Vict., c. 30, s. 7, 636
 16 & 17 Vict., c. 32, 379
 16 & 17 Vict., c. 32, ss. 1, 2, 372
 16 & 17 Vict., c. 32, s. 8, 373
 16 & 17 Vict., c. 62, 196
 16 & 17 Vict., c. 62, s. 1, 176
 16 & 17 Vict., c. 79, s. 6, 1308
 16 & 17 Vict., c. 79, ss. 7, 8, 1266
 16 & 17 Vict., c. 79, s. 14, 1290, 1314
 16 & 17 Vict., c. 96, s. 9, 311
 16 & 17 Vict., c. 96, s. 13, 299
 16 & 17 Vict., c. 97, s. 35, 1343
 16 & 17 Vict., c. 97, s. 97, 222
 16 & 17 Vict., c. 97, s. 103, 222
 16 & 17 Vict., c. 97, s. 116, 243
 16 & 17 Vict., c. 99, 346
 16 & 17 Vict., c. 107, ss. 234, 235, 247, 290
 16 & 17 Vict., c. 119, s. 1, 2, 446
 16 & 17 Vict., c. 119, s. 3, 1109, 1113, 1116
 16 & 17 Vict., c. 119, ss. 3, 4, 5, 447
 16 & 17 Vict., c. 119, ss. 6, 7, 8, 9, 10, 448
 16 & 17 Vict., c. 119, ss. 11, 12, 13, 14, 449
 16 & 17 Vict., c. 119, ss. 15, 16, 17, 450
 16 & 17 Vict., c. 134, s. 1, 565
 16 & 17 Vict., c. 134, ss. 2, 3, 5, 6, 566
 16 & 17 Vict., c. 134, s. 3, 590
 16 & 17 Vict., c. 134, s. 7, 567
 16 & 17 Vict., c. 134, s. 8, 588
 16 & 17 Vict., c. 134, s. 52, 573
 16 & 17 Vict., c. 137, s. 13, 672
 17 & 18 Vict., c. 60, s. 1, 209
 17 & 18 Vict., c. 60, s. 2, 210, 1414
 17 & 18 Vict., c. 60, s. 3, 208
 17 & 18 Vict., c. 71, 1284
 17 & 18 Vict., c. 79, 127
 17 & 18 Vict., c. 87, ss. 1, 2, 577
 17 & 18 Vict., c. 90, s. 2, 216
 17 & 18 Vict., c. 97, s. 9, 902
 17 & 18 Vict., c. 102, 498
 17 & 18 Vict., c. 104, s. 246, 289
 17 & 18 Vict., c. 104, s. 267, 50, 1323
 18 & 19 Vict., c. 70, 739
 18 & 19 Vict., c. 79, ss. 1, 2, 587
 18 & 19 Vict., c. 79, s. 3, 588
 18 & 19 Vict., c. 81, 1397
 18 & 19 Vict., c. 81, ss. 3, 4, 6, 1403
 18 & 19 Vict., c. 81, ss. 3, 4, 6, 8, 9, 13, 1401
 18 & 19 Vict., c. 91, s. 21, 43, 49
 18 & 19 Vict., c. 108, s. 14, 1106
 18 & 19 Vict., c. 118, 79
 18 & 19 Vict., c. 118, s. 2, 128
 18 & 19 Vict., c. 118, ss. 2, 3, 4, 5, 127
 18 & 19 Vict., c. 120, 756
 18 & 19 Vict., c. 120, s. 134, 385
 18 & 19 Vict., c. 121, 385
 18 & 19 Vict., c. 121, s. 22, 224
 18 & 19 Vict., c. 122, s. 73, 1105
 18 & 19 Vict., c. 124, s. 10, 672
 18 & 19 Vict., c. 126, s. 14, 777, 1331
 18 & 19 Vict., c. 126, s. 21, 772
 18 & 19 Vict., c. 128, ss. 1, 3, 10, 568
 18 & 19 Vict., c. 128, s. 2, 590
 18 & 19 Vict., c. 128, ss. 4, 12, 573
 18 & 19 Vict., c. 128, ss. 6, 12, 578
 18 & 19 Vict., c. 128, s. 7, 586
 18 & 19 Vict., c. 128, s. 8, 571
 18 & 19 Vict., c. 128, s. 9, 583
 18 & 19 Vict., c. 128, s. 11, 581
 18 & 19 Vict., c. 128, s. 13, 579
 18 & 19 Vict., c. 128, ss. 14, 16, 584
 18 & 19 Vict., c. 128, s. 18, 569, 690
 18 & 19 Vict., c. 128, ss. 19, 20, 577
 19 Vict., c. 16, ss. 9, 22, 24, 371
 19 & 20 Vict., c. 16, 615, 617, 650
 19 & 20 Vict., c. 16, ss. 13, 24, 25, 1322
 19 & 20 Vict., c. 16, ss. 26, 27, 1323
 19 & 20 Vict., c. 50, s. 5, 57
 19 & 20 Vict., c. 50, s. 16, 57
 19 & 20 Vict., c. 64, 58
 19 & 20 Vict., c. 69, s. 1, 1036
 19 & 20 Vict., c. 69, s. 2, 1037
 19 & 20 Vict., c. 69, ss. 5, 20, 1040
 19 & 20 Vict., c. 69, ss. 6, 7, 1050
 19 & 20 Vict., c. 69, s. 8, 1052
 19 & 20 Vict., c. 69, s. 9, 1051
 19 & 20 Vict., c. 69, ss. 10, 11, 1053
 19 & 20 Vict., c. 69, s. 12, 1054
 19 & 20 Vict., c. 69, ss. 14, 30, 31, 1034
 19 & 20 Vict., c. 69, s. 15, 1035
 19 & 20 Vict., c. 69, ss. 16, 17, 1044
 19 & 20 Vict., c. 69, ss. 18, 19, 1057
 19 & 20 Vict., c. 69, s. 20, 1048
 19 & 20 Vict., c. 69, s. 23, 1049
 19 & 20 Vict., c. 93, ss. 3, 4, 1038
 19 & 20 Vict., c. 103, 385
 19 & 20 Vict., c. 104, 686, 740
 19 & 20 Vict., c. 104, s. 9, 763
 19 & 20 Vict., c. 104, s. 14, 729, 740
 19 & 20 Vict., c. 104, s. 23, 753
 19 & 20 Vict., c. 104, s. 678, 697
 20 Vict., c. 2, 1045
 20 & 21 Vict., c. 3, s. 2, 272
 20 & 21 Vict., c. 31, s. 12, 751, 905
 20 & 21 Vict., c. 43, 55, 218, 266, 371, 420, 616
 20 & 21 Vict., c. 43, ss. 1, 2, 3, 262
 20 & 21 Vict., c. 43, s. 2, 264, 372
 20 & 21 Vict., c. 43, ss. 4, 5, 6, 7, 8, 9, 10, 11, 12, 263
 20 & 21 Vict., c. 43, ss. 13, 14, 15, 264
 20 & 21 Vict., c. 50, s. 5, 771
 20 & 21 Vict., c. 50, s. 6, 1258
 20 & 21 Vict., c. 50, s. 7, 1254
 20 & 21 Vict., c. 81, ss. 1, 2, 581
 20 & 21 Vict., c. 81, ss. 3, 11, 585
 20 & 21 Vict., c. 81, ss. 6, 14, 588
 20 & 21 Vict., c. 81, s. 7, 566, 574
 20 & 21 Vict., c. 81, s. 8, 574
 20 & 21 Vict., c. 81, s. 9, 582
 20 & 21 Vict., c. 81, s. 10, 571
 20 & 21 Vict., c. 81, s. 15, 591

- 20 & 21 Vict., c. 81, s. 16, 589
 20 & 21 Vict., c. 81, s. 17, 572
 20 & 21 Vict., c. 81, ss. 18, 19, 20, 21, 580
 20 & 21 Vict., c. 81, s. 22, 577
 20 & 21 Vict., c. 81, s. 23, 569
 20 & 21 Vict., c. 81, s. 25, 468
 20 & 21 Vict., c. 81, ss. 26, 30, 584
 20 & 21 Vict., c. 81, s. 27, 575
 20 & 21 Vict., c. 85, s. 10, 691
 20 & 21 Vict., c. 101, s. 5, 265
 21 & 22 Vict., c. 33, s. 1, 1365
 21 & 22 Vict., c. 70, s. 3, 1181
 21 & 22 Vict., c. 70, s. 4, 1182
 21 & 22 Vict., c. 70, s. 5, 1175, 1182
 21 & 22 Vict., c. 73, ss. 2, 9, 770
 21 & 22 Vict., c. 73, s. 5, 865
 21 & 22 Vict., c. 87, 498
 21 & 22 Vict., c. 92, 772
 21 & 22 Vict., c. 92, s. 95, 335, 231
 21 & 22 Vict., c. 98, 621
 21 & 22 Vict., c. 98, s. 47, 437
 21 & 22 Vict., c. 98, s. 49, 576
 22 Vict., c. 1, 569
 22 Vict., c. 1, ss. 2, 24, 570
 22 Vict., c. 33, s. 1, 369
 22 Vict., c. 34, 977
 22 Vict., c. 35, ss. 1, 2, 3, 1264
 22 Vict., c. 35, ss. 9, 10, 11, 1261
 22 Vict., c. 35, ss. 12, 13, 14, 16, 1262
 22 & 23 Vict., c. 17, 610
 22 & 23 Vict., c. 17, ss. 1, 2, 329
 22 & 23 Vict., c. 17, s. 2, 985
 22 & 23 Vict., c. 21, s. 40, 1227
 22 & 23 Vict., c. 32, s. 1, 1038
 22 & 23 Vict., c. 32, s. 2, 1050
 22 & 23 Vict., c. 32, s. 3, 1051
 22 & 23 Vict., c. 32, s. 6, 1283
 22 & 23 Vict., c. 32, s. 7, 1073
 22 & 23 Vict., c. 32, ss. 8, 9, 10, 1074
 22 & 23 Vict., c. 32, ss. 11, 12, 13, 1075
 22 & 23 Vict., c. 32, ss. 14, 15, 16, 17, 19, 1076
 22 & 23 Vict., c. 32, s. 17, 1041, 1054
 22 & 23 Vict., c. 32, s. 18, 1046
 22 & 23 Vict., c. 32, s. 19, 1054
 22 & 23 Vict., c. 32, ss. 20, 21, 1055, 1077
 22 & 23 Vict., c. 32, s. 24, 1052, 1077
 22 & 23 Vict., c. 32, s. 25, 1048
 22 & 23 Vict., c. 32, s. 26, 1046, 1070
 22 & 23 Vict., c. 32, s. 27, 1035, 1053
 22 & 23 Vict., c. 33, s. 3, 1217
 22 & 23 Vict., c. 33, s. 28, 1052
 22 & 23 Vict., c. 43, ss. 1, 4, 5, 926
 22 & 23 Vict., c. 43, ss. 6, 7, 927
 22 & 23 Vict., c. 116, 1205
 22 & 23 Vict., c. 116, s. 2, 1203
 23 Vict., c. 27, ss. 40, 41, 1431
 23 & 24 Vict., c. 14, 472
 23 & 24 Vict., c. 32, 1403
 23 & 24 Vict., c. 32, s. 2, 733, 1402
 23 & 24 Vict., c. 32, s. 3, 288, 733
 23 & 24 Vict., c. 32, s. 4, 733
 23 & 24 Vict., c. 32, s. 7, 689
 23 & 24 Vict., c. 64, ss. 1, 2, 576
 23 & 24 Vict., c. 64, s. 3, 577
 23 & 24 Vict., c. 64, s. 4, 575
 23 & 24 Vict., c. 77, 385
 23 & 24 Vict., c. 78, ss. 1, 2, 462
 23 & 24 Vict., c. 78, ss. 3, 4, 5, 6, 463
 23 & 24 Vict., c. 78, s. 7, 464
 23 & 24 Vict., c. 78, ss. 8, 9, 465
 23 & 24 Vict., c. 78, ss. 10, 11, 12, 466
 23 & 24 Vict., c. 81, s. 5, 578
 23 & 24 Vict., c. 84, ss. 1, 2, 3, 4, 53
 23 & 24 Vict., c. 84, ss. 5, 6, 7, 8, 9, 10, 11, 12, 13, 54
 23 & 24 Vict., c. 84, ss. 9, 10, 12, 55
 23 & 24 Vict., c. 84, s. 11, 56
 23 & 24 Vict., c. 84, s. 13, 52
 23 & 24 Vict., c. 116, s. 3, 1233
 23 & 24 Vict., c. 116, s. 4, 1234
 23 & 24 Vict., c. 116, ss. 5, 6, 1235
 23 & 24 Vict., c. 116, ss. 6, 19, 20, 1207
 23 & 24 Vict., c. 116, s. 23, 1208
 23 & 24 Vict., c. 127, s. 26, 346
 23 & 24 Vict., c. 142, s. 2, 697
 23 & 24 Vict., c. 142, s. 20, 741
 23 & 24 Vict., c. 142, s. 28, 698
 23 & 24 Vict., c. 151, 801, 1221
 24 & 25 Vict., c. 7, s. 2, 1266
 24 & 25 Vict., c. 10, s. 72, 1160
 24 & 25 Vict., c. 21, s. 3, 69, 83
 24 & 25 Vict., c. 38, s. 4, 806
 24 & 25 Vict., c. 42, 799
 24 & 25 Vict., c. 73, s. 2, 1182
 24 & 25 Vict., c. 75, 98, 100
 24 & 25 Vict., c. 75, s. 2, 94
 24 & 25 Vict., c. 75, ss. 3, 4, 1291
 24 & 25 Vict., c. 75, s. 5, 770, 1296
 24 & 25 Vict., c. 91, ss. 7, 10, 14, 75
 24 & 25 Vict., c. 94, s. 1, 28, 29, 37
 24 & 25 Vict., c. 94, s. 3, 30
 24 & 25 Vict., c. 94, s. 4, 37
 24 & 25 Vict., c. 94, s. 5, 28, 342
 24 & 25 Vict., c. 94, s. 7, 28, 34, 35, 45
 24 & 25 Vict., c. 94, s. 8, 22, 23, 30, 677
 24 & 25 Vict., c. 94, s. 9, 35, 1209
 24 & 25 Vict., c. 95, s. 9, 450, 552
 24 & 25 Vict., c. 96, 611, 1106
 24 & 25 Vict., c. 96, ss. 18, 88, 1411
 24 & 25 Vict., c. 96, ss. 19, 20, 1412
 24 & 25 Vict., c. 96, s. 21, 1323
 24 & 25 Vict., c. 96, s. 33, 1144
 24 & 25 Vict., c. 96, ss. 42, 43, 45, 49, 119, 324, 326
 24 & 25 Vict., c. 96, s. 47, 325
 24 & 25 Vict., c. 96, s. 48, 326
 24 & 25 Vict., c. 96, s. 50, 550, 1410
 24 & 25 Vict., c. 96, s. 51, 550
 24 & 25 Vict., c. 96, s. 52, 552
 24 & 25 Vict., c. 96, ss. 58, 59, 563
 24 & 25 Vict., c. 96, s. 72, 350
 24 & 25 Vict., c. 96, s. 88, 350
 24 & 25 Vict., cc. 96, 97, 100, 297
 24 & 25 Vict., c. 96, s. 99, 26
 24 & 25 Vict., c. 96, s. 103, 289, 296, 300
 24 & 25 Vict., c. 96, s. 104, 290
 24 & 25 Vict., c. 96, s. 110, 220
 24 & 25 Vict., c. 96, s. 111, 1160
 24 & 25 Vict., c. 96, s. 112, 1163
 24 & 25 Vict., c. 96, s. 116, 284, 285
 24 & 25 Vict., c. 96, s. 120, 26
 24 & 25 Vict., c. 97, 924

- 24 & 25 Vict., c. 97, ss. 10, 52, 62, 1104
 24 & 25 Vict., c. 97, ss. 16, 17, 18, 51, 1183
 24 & 25 Vict., c. 97, ss. 22, 23, 285
 24 & 25 Vict., c. 97, ss. 26, 28, 800
 24 & 25 Vict., c. 97, s. 33, 539
 24 & 25 Vict., c. 97, s. 40, 312
 24 & 25 Vict., c. 97, s. 52, 873, 875, 1110, 1184
 24 & 25 Vict., c. 97, s. 62, 1110
 24 & 25 Vict., c. 97, s. 58, 23
 24 & 25 Vict., c. 97, s. 61, 289, 296
 24 & 25 Vict., c. 97, s. 62, 1129
 24 & 25 Vict., c. 97, s. 63, 26
 24 & 25 Vict., c. 97, s. 67, 1160
 24 & 25 Vict., c. 97, s. 68, 220
 24 & 25 Vict., c. 97, s. 69, 1163
 24 & 25 Vict., c. 97, s. 71, 1324
 24 & 25 Vict., c. 97, s. 72, 47
 24 & 25 Vict., c. 97, ss. 74, 75, 539
 24 & 25 Vict., c. 97, s. 77, 1323
 24 & 25 Vict., c. 98, s. 34, 377
 24 & 25 Vict., c. 98, s. 36, 767
 24 & 25 Vict., c. 98, s. 49, 23
 24 & 25 Vict., c. 98, s. 50, 47
 24 & 25 Vict., c. 98, s. 54, 1323
 24 & 25 Vict., c. 99, s. 1, 803
 24 & 25 Vict., c. 99, s. 2, 804
 24 & 25 Vict., c. 99, s. 3, 805
 24 & 25 Vict., c. 99, s. 5, 806
 24 & 25 Vict., c. 99, ss. 6, 7, 8, 807
 24 & 25 Vict., c. 99, ss. 9, 10, 808
 24 & 25 Vict., c. 99, s. 12, 810
 24 & 25 Vict., c. 99, ss. 13, 14, 15, 811
 24 & 25 Vict., c. 99, ss. 16, 17, 18, 19, 812
 24 & 25 Vict., c. 99, ss. 20, 21, 22, 813
 24 & 25 Vict., c. 99, s. 24, 814
 24 & 25 Vict., c. 99, s. 25, 816
 24 & 25 Vict., c. 99, ss. 25, 26, 27, 816
 24 & 25 Vict., c. 99, s. 28, 817
 24 & 25 Vict., c. 99, ss. 29, 30, 818
 24 & 25 Vict., c. 99, s. 31, 288, 297, 819
 24 & 25 Vict., c. 99, s. 32, 819
 24 & 25 Vict., c. 99, ss. 33, 42, 819, 1325
 24 & 25 Vict., c. 99, ss. 35, 820
 24 & 25 Vict., c. 99, ss. 36, 37, 821
 24 & 25 Vict., c. 99, s. 37, 285
 24 & 24 Vict., c. 99, ss. 38, 39, 40, 41, 822
 24 & 25 Vict., c. 99, ss. 41, 42, 822
 24 & 25 Vict., c. 100, 312, 343
 24 & 25 Vict., c. 100, s. 4, 991
 24 & 25 Vict., c. 100, s. 8, 15
 24 & 25 Vict., c. 100, s. 9, 43, 156
 24 & 25 Vict., c. 100, s. 10, 43, 46, 156
 24 & 25 Vict., c. 100, ss. 9, 10, 156
 24 & 25 Vict., c. 100, s. 11, 343
 24 & 25 Vict., c. 100, s. 15, 33, 343
 24 & 25 Vict., c. 100, s. 26, 311
 24 & 25 Vict., c. 100, ss. 26, 73, 1325
 24 & 25 Vict., c. 100, s. 27, 311, 679
 24 & 25 Vict., c. 100, s. 31, 1411
 24 & 25 Vict., c. 100, s. 36, 332, 759, 1410
 24 & 25 Vict., c. 100, s. 37, 330
 24 & 25 Vict., c. 100, s. 38, 327, 1021
 24 & 25 Vict., c. 100, s. 39, 321
 24 & 25 Vict., c. 100, s. 40, 324, 333
 24 & 25 Vict., c. 100, s. 43, 324
 24 & 25 Vict., c. 100, s. 41, 324, 330
 24 & 25 Vict., c. 100, s. 42, 317, 324, 351, 1183
 24 & 25 Vict., c. 100, ss. 43, 44, 45, 46, 72, 76, 318, 351
 24 & 25 Vict., c. 100, ss. 50, 71, 677
 24 & 25 Vict., c. 100, s. 53, 7
 24 & 25 Vict., c. 100, ss. 54, 55, 9
 24 & 25 Vict., c. 100, ss. 56, 67, 69, 70, 676
 24 & 25 Vict., c. 100, s. 57, 450
 24 & 25 Vict., c. 100, s. 58, 13
 24 & 25 Vict., c. 100, s. 59, 13
 24 & 25 Vict., c. 100, s. 62, 329
 24 & 25 Vict., c. 100, s. 66, 290
 24 & 25 Vict., c. 100, s. 67, 23
 24 & 25 Vict., c. 100, s. 69, 327, 330, 331, 451
 24 & 25 Vict., c. 100, s. 73, 324, 328
 24 & 25 Vict., c. 100, s. 74, 324, 328
 24 & 25 Vict., c. 100, s. 75, 328
 24 & 25 Vict., c. 100, s. 77, 992, 1324
 24 & 25 Vict., c. 100, s. 342, 357
 24 & 25 Vict., c. 101, 1344
 24 & 25 Vict., c. 106, s. 6, 1225
 24 & 25 Vict., c. 133, ss. 2, 3, 1416
 24 & 25 Vict., c. 133, ss. 4, 5, 6, 11, 1417
 24 & 25 Vict., c. 133, ss. 12, 13, 16, 17, 1418
 24 & 25 Vict., c. 133, ss. 18, 19, 20, 22, 23, 1419
 24 & 25 Vict., c. 133, ss. 24, 25, 26, 27, 28, 29, 1420
 24 & 25 Vict., c. 133, ss. 31, 32, 33, 1421
 24 & 25 Vict., c. 133, ss. 34, 35, 36, 37, 38, 1422
 24 & 25 Vict., c. 133, ss. 39, 40, 42, 43, 44, 45, 1423
 24 & 25 Vict., c. 133, ss. 46, 47, 48, 49, 50, 51, 1424
 24 & 25 Vict., c. 133, ss. 52, 43, 54, 55, 56, 57, 58, 59, 60, 61, 62, 1425
 24 & 25 Vict., c. 133, ss. 63, 64, 65, 66, 67, 68, 1426
 24 & 25 Vict., c. 133, ss. 70, 71, 1427
 24 & 25 Vict., c. 133, ss. 72, 73, 74, 75, 76, 1428
 24 & 25 Vict., c. 133, ss. 77, 78, 79, 1429
 24 & 25 Vict., c. 133, ss. 80, 81, 82, 83, 1430
 24 & 25 Vict., c. 134, ss. 54, 145, 205, 393
 24 & 25 Vict., c. 134, ss. 69, 157, 221, 389
 24 & 25 Vict., c. 134, ss. 86, 203, 204, 206, 395
 24 & 25 Vict., c. 134, ss. 221, 229, 392
 24 & 25 Vict., c. 134, ss. 223, 224, 1326
 24 & 25 Vict., c. 134, s. 224, 985
 24 & 25 Vict., c. 134, s. 225, 394
 24 & 25 Vict., c. 134, s. 229, 391, 394
 25 Vict., c. 8, s. 1, 464
 25 Vict., c. 22, 601
 25 Vict., c. 22, s. 12, 67
 25 Vict., c. 22, ss. 12, 13, 93
 25 Vict., c. 22, s. 16, 93
 25 & 26 Vict., c. 22, s. 12, 67
 25 & 26 Vict., c. 59, 1414
 25 & 26 Vict., c. 79, 801
 25 & 26 Vict., c. 83, 1117
 25 & 26 Vict., c. 89, s. 6, 914
 25 & 26 Vict., c. 89, ss. 13, 19, 21, 23, 25, 945
 25 & 26 Vict., c. 89, ss. 26, 27, 32, 33, 946
 25 & 26 Vict., c. 89, ss. 34, 39, 40, 41, 42, 947

- 25 & 26 Vict., c. 89, ss. 43, 44, 45, 46, 948
 25 & 26 Vict., c. 89, ss. 51, 52, 53, 54, 56, 949
 25 & 26 Vict., c. 89, ss. 58, 60, 62, 63, 64, 65, 950
 25 & 26 Vict., c. 89, ss. 66, 67, 68, 951
 25 & 26 Vict., c. 89, ss. 81, 92, 952
 25 & 26 Vict., c. 89, ss. 111, 112, 113, 129, 130, 133, 953
 25 & 26 Vict., c. 89, ss. 142, 143, 155, 954
 25 & 26 Vict., c. 89, ss. 166, 167, 168, 169, 175, 176, 955
 25 & 26 Vict., c. 89, ss. 179, 180, 956
 25 & 26 Vict., c. 89, ss. 181, 182, 192, 199, 957
 25 & 26 Vict., c. 89, ss. 203, 204, 205, 206, 209, 958
 25 & 26 Vict., c. 89, s. 210, 959
 25 & 26 Vict., c. 95, s. 88, 626
 25 & 26 Vict., c. 100, ss. 1, 2, 580
 26 & 27 Vict., c. 29, 498
 26 & 27 Vict., c. 33, s. 1, 69
 26 & 27 Vict., c. 33, s. 20, 93
 26 & 27 Vict., c. 33, s. 21, 67
 26 & 27 Vict., c. 34, s. 22, 1346
 26 & 27 Vict., c. 38, s. 1, 464
 26 & 27 Vict., c. 40, ss. 3, 4, 383
 26 & 27 Vict., c. 40, ss. 5, 6, 384
 26 & 27 Vict., c. 40, s. 7, 385
 26 & 27 Vict., c. 41, 131
 26 & 27 Vict., c. 44, s. 1, 324
 26 & 27 Vict., c. 77, 1101
 26 & 27 Vict., c. 87, ss. 5, 9, 10, 386
 26 & 27 Vict., c. 87, ss. 11, 13, 387
 26 & 27 Vict., c. 93, s. 3, 1104
 26 & 27 Vict., c. 100, 1414
 26 & 27 Vict., c. 103, s. 1, 1184
 26 & 27 Vict., c. 103, s. 2, 1185
 26 & 27 Vict., c. 103, ss. 3, 4, 5, 1186
 26 & 27 Vict., c. 117, s. 2, 177
 26 & 27 Vict., c. 117, s. 3, 178
 26 & 27 Vict., c. 118, 936
 26 & 27 Vict., c. 122, ss. 1, 2, 337
 26 & 27 Vict., c. 124, 157
 26 & 27 Vict., c. 124, ss. 7, 8, 9, 10, 11, 159
 26 & 27 Vict., c. 124, ss. 12, 13, 14, 160
 26 & 27 Vict., c. 124, ss. 15, 16, 17, 18, 19, 161
 26 & 27 Vict., c. 125, 58
 27 & 28 Vict., c. 18, s. 5, 67
 27 & 28 Vict., c. 27, ss. 11, 12, 14, 173
 27 & 28 Vict., c. 37, ss. 1, 3, 4, 683
 27 & 28 Vict., c. 37, ss. 5, 6, 7, 8, 9, 10, 11, 684
 27 & 28 Vict., c. 47, 804, 806, 807, 813
 27 & 28 Vict., c. 47, s. 2, 677
 27 & 28 Vict., c. 47, s. 6, 297
 27 & 28 Vict., c. 48, 602
 27 & 28 Vict., c. 59, ss. 2, 3, 4, 769
 27 & 28 Vict., c. 87, 1188
 27 & 28 Vict., c. 97, ss. 1, 2, 3, 4, 589
 27 & 28 Vict., c. 97, ss. 5, 6, 7, 8, 590
 27 & 28 Vict., c. 98, 464
 27 & 28 Vict., c. 110, 1144
 28 Vict., c. 11, s. 40, 420
 28 Vict., c. 35, s. 3, 1054, 1055
 28 Vict., c. 35, s. 4, 1074
 28 Vict., c. 35, s. 5, 1076
 28 Vict., c. 64, 452
 28 & 29 Vict., c. 60, 216
 28 & 29 Vict., c. 60, ss. 1, 2, 1413
 28 & 29 Vict., c. 63, ss. 3, 4, 5, 6, 828
 28 & 29 Vict., c. 63, s. 6, 827
 28 & 29 Vict., c. 63, ss. 7, 8, 9, 10, 829
 28 & 29 Vict., c. 119, 176, 177
 28 & 29 Vict., c. 124, ss. 6, 7, 8, 9, 51
 28 & 29 Vict., c. 126, s. 37, 27
 28 & 29 Vict., c. 127, 111, 593, n., 865, 1145
 29 Vict., c. 2, s. 4, 180
 29 Vict., c. 2, ss. 5, 6, 7, 8, 181
 29 Vict., c. 2, s. 9, 182
 29 Vict., c. 2, ss. 10, 12, 13, 14, 183
 29 Vict., c. 2, ss. 15, 16, 26, 184
 29 Vict., c. 2, s. 18, 187
 29 Vict., c. 2, ss. 19, 20, 21, 22, 23, 24, 190
 29 Vict., c. 2, s. 23, 195
 29 Vict., c. 2, s. 25, 182
 29 Vict., c. 2, s. 27, 192
 29 Vict., c. 2, ss. 28, 29, 193
 29 Vict., c. 2, ss. 30, 31, 32, 33, 34, 194
 29 Vict., c. 15, s. 2, 178
 29 Vict., c. 15, ss. 4, 7, 179
 29 Vict., c. 15, s. 6, 192
 29 Vict., c. 15, s. 8, 180
 29 Vict., c. 15, ss. 5, 11, 191
 29 Vict., c. 19, 178
 29 Vict., c. 35, ss. 2, 3, 1087
 29 Vict., c. 35, ss. 4, 6, 7, 8, 13, 14, 1088
 29 Vict., c. 35, ss. 15, 16, 17, 18, 1089
 29 Vict., c. 35, ss. 19, 20, 21, 22, 23, 1090
 29 Vict., c. 35, ss. 24, 25, 26, 27, 28, 1091
 29 Vict., c. 35, ss. 29, 30, 31, 32, 1092
 29 Vict., c. 35, ss. 33, 34, 35, 36, 37, 1093
 29 Vict., c. 35, ss. 38, 39, 40, 41, 42, 1094
 29 & 30 Vict., c. 2, 197
 29 & 30 Vict., c. 15, 197
 29 & 30 Vict., c. 52, ss. 1, 2, 3, 1317
 29 & 30 Vict., c. 78, s. 1, 1345
 29 & 30 Vict., c. 78, s. 2, 1355
 29 & 30 Vict., c. 90, s. 43, 437
 29 & 30 Vict., c. 110, 197
 29 & 30 Vict., c. 110, s. 10, 192
 30 & 31 Vict., c. 5, 1411
 30 & 31 Vict., c. 35, ss. 1, 2, 986, 1327
 30 & 31 Vict., c. 35, ss. 3, 5, 1327
 30 & 31 Vict., c. 35, s. 9, 856
 30 & 31 Vict., c. 90, s. 13, 71, 75
 30 & 31 Vict., c. 109, 719
 30 & 31 Vict., c. 115, 245
 30 & 31 Vict., c. 125, s. 3, 178
 30 & 31 Vict., c. 125, s. 4, 179
 30 & 31 Vict., c. 125, s. 5, 196
 30 & 31 Vict., c. 125, s. 6, 181
 30 & 31 Vict., c. 125, ss. 7, 8, 182
 30 & 31 Vict., c. 125, ss. 9, 10, 183
 30 & 31 Vict., c. 125, ss. 11, 12, 13, 14, 16, 17, 18, 19, 185
 30 & 31 Vict., c. 125, s. 15, 183
 30 & 31 Vict., c. 125, ss. 20, 21, 22, 23, 24, 25, 26, 186
 30 & 31 Vict., c. 125, ss. 27, 28, 29, 50, 187
 30 & 31 Vict., c. 125, s. 30, 179
 30 & 31 Vict., c. 125, s. 31, 182
 30 & 31 Vict., c. 125, ss. 32, 34, 184
 30 & 31 Vict., c. 125, s. 35, 190

30 & 31 Vict., c. 125, s. 36, 188	30 & 31 Vict., c. 142, s. 4, 132
30 & 31 Vict., c. 125, ss. 36, 37, 38, 39, 188	31 & 32 Vict., c. 80, 1094
30 & 31 Vict., c. 125, ss. 40, 41, 42, 43, 44, 189	31 & 32 Vict., c. 109, ss. 1, 4, 724
30 & 31 Vict., c. 125, s. 45, 190	31 & 32 Vict., c. 109, s. 3, 730
30 & 31 Vict., c. 125, ss. 46, 47, 175	31 & 32 Vict., c. 109, ss. 5, 7, 725
30 & 31 Vict., c. 125, s. 48, 187	31 & 32 Vict., c. 109, s. 8, 709, 710
30 & 31 Vict., c. 125, s. 49, 177	31 & 32 Vict., c. 109, ss. 9, 10, 746
30 & 31 Vict., c. 125, s. 51, 179	31 & 32 Vict., c. 122, s. 37, 679
30 & 31 Vict., c. 125, s. 52, 180	31 & 32 Vict., c. 130, ss. 2, 3, 1432
30 & 31 Vict., c. 125, s. 53, 197	31 & 32 Vict., c. 130, ss. 4, 5, 6, 7, 8, 1433
30 & 31 Vict., c. 125, s. 54, 192	31 & 32 Vict., c. 130, ss. 9, 10, 11, 12, 1434
30 & 31 Vict., c. 125, ss. 55, 56, 193	31 & 32 Vict., c. 130, ss. 13, 14, 15, 16, 17, 18, 19, 1435
30 & 31 Vict., c. 125, ss. 57, 58, 59, 60, 61, 62, 195	31 & 32 Vict., c. 130, ss. 20, 21, 22, 23, 24, 1436
30 & 31 Vict., c. 130, ss. 3, 4, 5, 6, 7, 62	31 & 32 Vict., c. 130, ss. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 1437
30 & 31 Vict., c. 130, s. 8, 9, 10, 11, 12, 63	31 & 32 Vict., c. 130, ss. 35, 36, 37, 38, 39, 40, 41, 1438
30 & 31 Vict., c. 133, ss. 9, 10, 11, 567	
30 & 31 Vict., c. 134, s. 18, 1415	

THE
JUSTICE OF THE PEACE
AND
PARISH OFFICER.

Abatement, Pleas in. (a)

A PLEA in abatement consists of matter of defence, which merely defeats the present proceeding, and does not, like a plea in bar, show the defendant to be for ever discharged. What.

In criminal proceedings, such a plea is pleadable only to indictments and informations in the Crown Office. Appeals of felony are now abolished, 59 Geo. III. c. 46.

It is founded either on some defect apparent on the proceeding itself, or on some defect in matters of fact not so apparent, such as a misnomer of the defendant, or a misstatement of his addition.

Pleas in abatement of misnomer, or of want of addition or wrong addition of the party pleading, are now rendered of no advantage to such party in consequence of the 7 Geo. IV. c. 64, s. 19, allowing an amendment, as will be seen, *post*, p. 2; and are made yet more useless by 14 & 15 Vict. c. 100, s. 24, *post*, p. 2, which renders an amendment even unnecessary in cases of want of addition, and wrong addition, and in many other cases. Inutility of.

We will now consider

- I. *What may be Pleaded in Abatement*, 1.
- II. *Time and Manner of Pleading it, and Affidavit of Truth*, 3.
- III. *Amendment, Replication, Demurrer, and Issue, &c.* 4.
- IV. *Evidence*, 5.
- V. *Judgment, &c.*, 5.
- VI. *Forms*, 6.

I. What may be pleaded in Abatement.

The defendant might formerly have pleaded in abatement any defect apparent on the face of the indictment. (2 *Hale*, 236, 238.) As if it did not state the defendant's addition as required by the 1 Hen. V. c. 5; (*Andr.* 145; 1 *Show.* 392;) so if it did not state defendant's Christian name.

What may be pleaded. For apparent defects.

The want of certainty was pleadable in abatement; but now pleas in

Pleas in abatement for formal defects apparent on the face of the indictment abolished.

(a) As to these pleas in general, see 2 *Hale*, 236 to 239; 2 *Hawk.* c. 34; *Bac. Ab. Abatement*; *Com. Dig. Abatement*; 1 *Chit. C. L.* 445.

1. *What may be pleaded.*

abatement for formal defects apparent on the face of the indictment are no longer pleadable, for by 14 & 15 Vict. c. 100, s. 25, every objection to any indictment for any formal defect apparent on the face thereof, shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the Court or other person, and thereupon, the trial shall proceed as if no such defect had appeared.

For defects not apparent.

The defendant may plead in abatement a defect *not apparent* on the face of the indictment; (*Hawk. b. 2, c. 25, s. 70*;) as if he be misnamed either in his Christian or surname, or his addition be misstated. (1 *Leach*, 476; 2 *Hale*, 176, 236; *R. v. Shakespeare*, 10 *East*, 83.)

So if a peer be indicted as a commoner, he may plead his privilege in abatement. (2 *Hale*, 240; 6 *Rep.* 53; *R. v. Knowles*, 2 *Salk.* 509; 3 *Salk.* 242.)

So if the description of an highway, in an indictment for the non-repair of it, be too indefinite, being equally applicable to several highways, defendant may plead in abatement, alleging that all such highways are equally known by the description in the indictment; and if indeed the description be true in fact, that seems the only mode of taking advantage of the objection. (*Rex v. Hammersmith*, 1 *Stark. C. N. P.* 357.)

The defendant cannot, as in the case of an information, plead in abatement to an indictment that there is another indictment against him for the same offence; (1 *Jones*, 199; *Sir W. Withipole's case*, *Cro. Car.* 147;) but sometimes in such case the Court will quash the first indictment; (2 *Hawk. c. 34, s. 1*;) and as to where the Court will quash an indictment, see *post*, "*Indictment*," Vol. III.

Where several defendants.

It should seem, in an indictment against several defendants, a misnomer of one cannot be pleaded by the others; (see *Lutwyche*, 36; *Wade v. Stiff and others*, 1 *Moore & P.* 26;) but each may plead distinct matters in abatement, or one may plead in abatement and the other in bar. (See *R. v. Sherman*, *R. T. Hardw.* 303; 2 *Hale*, 176.)

Indictment to be amended in certain cases.

But by 7 Geo. IV. c. 64, s. 19, to prevent abuses from dilatory pleas, it is enacted, that no indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea, if the Court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the Court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

Certain defects cured.

And now by the 14 & 15 Vict. c. 100, s. 24, no indictment (information, or requisition and presentment, s. 30) for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears upon the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes, or vice versâ," nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequently to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for the want of the statement of the value or price of any matter or thing, or

the amount of damage, injury, or spoil, in any case where the value in price or the amount of damage, injury, or spoil, is not of the essence of the offence.

2. *Manner of pleading.*

II. Time and Manner of Pleading, and Affidavit, &c.

Time of Pleading.—The plea in abatement must be pleaded before any plea in bar. (2 *Hale*, 175 ; *Fost.* 16.) It should be put in upon the arraignment, when the defendant is called upon to answer. (2 *Hale*, 175 ; 1 *Leach*, 476.) But there are instances of the withdrawal of the plea of not guilty being allowed as a matter of favour after being recorded, and a plea to the jurisdiction permitted ; (*Kinlock's case*, *Fost.* 16 ;) but permission so to do to enable the prisoner to demur to the indictment was refused in *Reg. v. Brown* (17 *L. J. M. C.* 145 ; 1 *Den. C. C.* 291, 293, *S. C.*).

Time of pleading.

Manner of Pleading.—These pleas, like pleas in civil actions, are required to be framed with the greatest accuracy and precision, and should be certain to every intent, and be pleaded without any repugnancy, and must point out the objection, so that it may be readily amended or avoided in another prosecution. The general rules which are to be followed in framing pleas in abatement in civil actions will, for the most part, be here applicable, and will be found collected in 1 *Ch. Pl.* 445 to 448 ; *Com. Dig. Abatement*, 1, 11.

Manner of pleading.

In a plea of misnomer the defendant must disclose his real name, and by such name he will be concluded. (2 *Hale*, 238.)

Where a peer pleaded in abatement his right to be tried before the House of Lords, it was held the plea should have stated he was a peer of the United Kingdom, and the mode in which he derived his title, because such plea was to be determined by the record. (*Rex v. Cooke*, 2 *Barn. & C.* 618 ; 4 *Dowl. & R.* 592, *S. C.* ; 6 *Co. Rep.* 53 b. ; 2 *Hale*, 249.) In a plea of abatement for misnomer it would not appear to be necessary to state that he was baptized in the name he avers, but if he alleges that or any other unnecessary allegations, it is doubtful whether he will not be bound to prove them. (*Holman v. Walders*, 1 *Salk.* 6 ; *Weleker v. Le Pelletier*, 1 *Camp.* 479.)

In a prosecution for a felony, the defendant may plead over to the offence, after a plea in abatement has been determined for the crown ; and if he omit to do so, the Court will order it to be done, and insert it at the bottom of the parchment ; (*Dean's case*, 1 *Leach*, 476 ; 2 *Leach*, 712, n. a. ; 2 *Hale*, 238 ;) but the omission is no ground of demurrer, as the defendant may plead over to the felony after the plea in abatement has been determined against him, and this is *in favorem vitæ*. (*Id. Carth.* 55.) In misdemeanours the defendant is not allowed to plead over together with or after plea in abatement. (See *Rex v. Gibson*, 8 *East*, 107.)

The plea may be pleaded by attorney as well as in person. (*Rex v. Westby*, 10 *East*, 85, n. ; 2 *Hawk. c.* 34, s. 3, *S. C.*)

Great accuracy is required in the commencement and conclusion of the plea. A plea of misnomer commencing thus, "and the said C. D. who is indicted by the name of E. D. comes, &c." would be bad, for by styling himself the said C. D., he concludes himself as the party indicted. (2 *Hale*, 175.) It should conclude, "praying judgment on (or "of") the indictment and that it may be quashed." If the plea conclude in bar instead of in abatement, it will be bad. (See *R. v. Shakespeare*, 10 *East*, 83.) But see now 14 & 15 *Vict. c.* 100, s. 24, (*supra*.) within which pleas are included under the word "Indictment."

It has been decided the plea may be put in *ore tenus* ; (2 *Leach*, 535 ; 1 *Leach*, 476 ;) the present practice, however, does not warrant this, it being usual and therefore safest to put it in writing engrossed on

2. *Manner of pleading.* parchment or paper. It should be signed by counsel. (See *Cro. Car. C.* 21; 1 *Ch. C. L.* 448.)

Affidavit of truth.

Affidavit of Truth.—By the 4 Anne, c. 16, s. 11, it is provided, "That no dilatory plea shall be received in any court of record, unless the party offering such plea do by affidavit prove the truth thereof, or show some probable matter to the Court to induce them to believe that the fact of such dilatory plea is true."

This provision applies to pleas in abatement in criminal proceedings. (*Rex v. Grainger*, 3 *Burr.* 1617.) It is at all events necessary to add the affidavit to a plea in a prosecution filed in the Crown Office. (*Id.*; *Rex v. Jones*, 2 *Stra.* 1161.) It has been said, though for what reason it does not appear, that this affidavit is unnecessary on a trial at bar of an indictment for high treason. (*Fost.* 16; *Rex v. Grainger*, 3 *Burr.* 1617; 2 *Hawk.* c. 34, s. 7.)

The affidavit may, it seems, be made by the defendant or a third person. (*Lumley v. Foster*, *Barnes*, 344.) It should be properly entitled in the prosecution. It should state that the plea is true in substance and fact, and not merely that the plea is a true plea. (*Onslow v. Booth*, 2 *Stra.* 705).

III. Amendment of, Replication, Demurrer, and Issue.

Amendment.

Amendment.—If a plea of misnomer or want of addition be true, the prosecutor might, by the practice at common law, instead of replying, if the grand jury be still sitting, alter the indictment by substituting the name, &c. by which the defendant so pleaded, for the name in the indictment, and have it again preferred and found, and the defendant again arraigned upon it, in which case he would have been estopped from again pleading a misnomer or want of addition.

But a more effectual course in this respect is provided by the 7 Geo. IV. c. 64, s. 19, which allows the Court to cause the indictment to be amended, and call on the defendant to plead over thereto, as if the plea in abatement had not been pleaded. For this enactment, see *ante*, p. 2.

It should seem that this statute does not affect the right of a peer, when indicted as a commoner, to plead in abatement of an indictment for felony; for his title is not only part of his name, but gives him a different mode of trial, viz., by his peers, and is an objection to the substance. (*R. v. Cooke*, 2 *B. & C.* 871.) The want of addition has ceased to be any objection to an indictment, 14 & 15 Vict. c. 100, s. 24; *ante*, p. 2.

The Court will not allow a plea in abatement to be amended. (*R. v. Cooke*, 2 *B. & C.* 871.) But pleas are now within 14 & 15 Vict. c. 100; *ante*, p. 2.

Demurrer.

Demurrer.—If the plea be insufficient in form, or bad in point of substance, the prosecutor may demur. (*Rex v. Gibson*, 8 *East*, 83.)

The Court will not, in general, on motion, quash a bad plea in abatement. (*Rex v. Cooke*, 2 *Barn. & C.* 618; 1 *Dowl. & R.* 43, *S. C.*) *Abbott*, C. J., intimated in that case that there was a great difference between quashing indictments and quashing pleas, and that it would in general be much too strong a measure to quash the latter, though it were clearly defective. See, however, now, 14 & 15 Vict. c. 100, ss. 25, 30.

In cases of felony the demurrer and joinder may be *ore tenus*. (*Fost.* 105; 1 *Leach*, 476.) In indictments for treason the defendant must join in demurrer instantan. (6 *Harg. St. Trials*, 241.)

Unless the plea be clearly defective, it is best not to demur, but to amend as above. Now, inasmuch as under the word indictment, used in the 14 & 15 Vict. c. 100, plea is included, the defects enumerated in sect. 24, *ante*, p. 2, are cured in pleas.

Replication.—If the plea be untrue in fact, the prosecutor may reply denying such fact, or allege matter of estoppel. Thus, to a plea of misnomer, he may either deny the plea, or reply that the defendant is known as well by one name as the other. (2 *Leach*, 476; 2 *Hale*, 237.) The replication must not commence as to a plea in bar. (See *Carth.* 187; *Bac. Ab. Abatement*, 8.) The conclusion must be proper, and usually is to the country. On a plea of peerage the conclusion should be by the record, and not to the country; (see *Countess of Rutland's case*, 6 *Rep.* 53; 2 *Hale*, 240;) but an issue whether a woman is a peeress by marriage, may conclude to the country. (*Id.* See *Rex v. Cooke*, 2 *Barn. & C.* 618, 871; 4 *Dowl. & R.* 592, *S. C.*)

3. *Judgment, &c.*
Replication.

Unless the plea be clearly untrue, it is best to amend.

Defects in form in replications are also cured by 14 & 15 Vict. c. 100, s. 24, as they also are included in the word indictment.

Issue, &c.—If the replication be bad in form or substance, the defendant may demur, and if he establish the insufficiency, he will have judgment, subject to the provisions of 14 & 15 Vict. c. 100, s. 24; as where defendant pleaded in abatement that he was a peer, and the Attorney-General replied, that he formerly petitioned the Lords to be tried by them and was refused; he obtained judgment on demurrer, inasmuch as the decision of the House of Lords is no judgment, and therefore the replication was invalid. (*Rex v. Knollys*, 2 *Salk.* 509; *Holt.* 530.)

Where issue is joined on a plea in abatement, the *venire* may be returned and the trial proceeded with instantly by a jury of the same county. (1 *Leach*, 476; 2 *Hale*, 238.) At the sessions, however, where a misdemeanour only is in question, it is the usual practice after plea for the defendant to enter into a recognizance to prosecute the same with effect at the ensuing sessions, and then he must give four days' notice of his intention to try to the prosecutor; and if he does not reply, judgment will be entered for the defendant. (*Cro. Car. C.* 31.)

IV. Evidence.

In a plea of misnomer, where defendant alleges that he was "named and called," it is sufficient for him to prove that he was *generally* known by that name. But it is not sufficient in such case to prove that he has been called so once or twice. The usual proof in support of a plea in abatement of misnomer, is an examined copy of the register of his baptism, with evidence of identity by a party present at the ceremony or otherwise. It is said that this proof of baptism is absolutely necessary when the plea alleges that defendant was "baptized" by the name; (*Weicker v. Pelletier*, 1 *Camp.* 479;) but this seems very questionable. (See *Arch. C. L.* 16th ed. 34.) Defendant may prove his name by letters of denization, or a commission in the army by it, and proof that he has been known in other countries by that name is sufficient. (See *id.*)

A plea of peerage must be proved by letters-patent under the great seal. (See *Rex v. Knollys*, 2 *Salk.* 509; 1 *Ld. Raym.* 10, *S. C.*; 3 *Salk.* 242.) As to proof of such letters, see title "*Evidence*," Vol. II.

Evidence in misnomer.

V. Judgment, &c.

Before the 7 Geo. IV. c. 64, s. 19, the judgment for the *defendant* on a plea in abatement was, in a case of a misdemeanour, that the indictment be quashed, and that he be not compelled to answer, but should depart

Judgment for defendant.

5. *Judgment, &c.* the court without day ; (2 *Hale*, 238 ; *Rex v. Shakespeare*, 10 *East*, 87 ;) but for felony or treason, though the indictment were quashed, the court would not dismiss the defendant, but would cause him to be indicted *de novo*. (*Sir H. Ferrers's case*, *Cro. Car.* 371 ; 2 *Hale*, 176, 238 ; 2 *Hawk.* c. 34, s. 2.) A judgment in abatement for one of several defendants would not affect the others. (*Rex v. Sherman*, *R. T. Hardw.* 303 ; 2 *Hale*, 177.)

But this, as regards pleas in abatement of misnomer, or want of addition or wrong addition, is materially altered by the above statute, which as we have seen, *ante*, 3, allows the court to cause the indictment to be amended on such plea, and to call on the party to plead as if no dilatory plea had been pleaded ; and indictments are now further upheld by the provisions of the 14 & 15 Vict. c. 100, ss. 24, 25, *ante*, p. 2.

Judgment for the Queen.

The judgment for the queen on a plea in abatement to an indictment for a misdemeanour is final ; (*Rex v. Gibson*, 8 *East*, 107 ; 2 *Hawk.* c. 31, s. 7 ; 1 *Leach*, 478 ;) but in treason or felony the judgment is that the defendant do answer over. (*Rex v. Gibson*, 8 *East*, 110 ; 1 *Leach*, 478 ; 2 *Hale*, 239.) And in both cases, on a judgment on demurrer, the judgment is that the defendant do answer over ; (*Trem. P. C.* 189, 190 ; *Rex v. Hon. R. Johnson*, 6 *East*, 583, 602 ; *Eichorn v. Le Maitre*, 2 *Wils.* 368 ; 1 *Ch. C. L.* 451 ;) and the reason for this latter doctrine is, that every man shall not be presumed to know matter of law, which he leaves to the judgment of the court, but he is presumed to know whether his plea be true or false in matter of fact.

VI. Forms.

(1.) Plea in abatement of misnomer of defendant's Christian name (a).

The Queen
against
Sarah Lee
indicted by the name
of Jane Lee. } And Sarah Lee [the real name], who is indicted by the name of Jane Lee, in her own proper person [or, "by her attorney,"] comes into court here, and prays judgment of the said indictment, because she says that she, the said Sarah Lee, from the time of her baptism to this present time was, and still is, called and known by the name of Sarah, and by the said Christian name is, and during the whole time aforesaid was called, named and known, without this, that she the said Sarah Lee now is, or at any time heretofore to this day, was called, named, or known by the name of Jane, as is supposed by the indictment aforesaid ; and this she, the said Sarah Lee, is ready to verify ; for which reason, and because she, the said Sarah Lee, is not named in the said indictment by the name of Sarah Lee, she, the said Sarah Lee, prayeth judgment of the said indictment, and that the same may be quashed. [Engross this plea on parchment or paper, and get it signed by counsel, and annex the following affidavit.]

(2.) Affidavit of truth of plea.

In the Queen's Bench.

Sarah Lee, of _____, in the county of _____, maketh oath and saith, that the plea hereunto annexed is true in substance and matter of fact.
Sarah Lee.

(a) See other Forms of Pleas in Abatement of Misnomer, 4 *Ch. C. L.* 520 ; 1 *Cro. Car. C.* 46 ; *Rex v. Shakespeare*, 10 *East*, 82 ; of want of addition, 4 *Ch. C. L.* 524 ; *Stark.* 705 ; of wrong addition, 4 *Ch. C. L.* 521 ; 3 *Burr.* 1517 ; *Stark.* 704 ; of peerage, 4 *Ch. C. L.* 523 ; *Rex v. Cooke*, 2 *B. &*

C. 618 ; 4 *D. & R.* 592, *S. C.* ; that there is no such parish as that named, 4 *Ch. C. L.* 525. See forms of entries of such pleas, *id.* 521, 525.

See also forms of demurrer and joinder in demurrer to pleas in abatement, 4 *Ch. C. L.* 525, 526.

And hereupon J. N. [the clerk of the peace, or clerk of the arraigns, or if the plea be to an information say, "and J. S. knight, of our said Lady the Queen,"] who prosecutes for our said Lady the Queen in this behalf, says that the said indictment, by reason of any thing by the said Sarah Lee in her said plea above alleged, ought not to be quashed; because he says that the said Sarah Lee, long before, and at the time of the preferring of the said indictment, was and still is known as well by the name of Jane Lee as by the name of Sarah Lee, to wit, at the parish aforesaid, in the county aforesaid, and this he the said J. N. prays may be inquired of by the country, &c.

1. On account of Property.

(3.) Replication thereto, that defendant is known as well by the one name as the other.

Abduction of Women.

THIS offence may be divided into three classes,—first, the abduction of a woman of age, or under age, on account of her fortune, with intent to marry or defile her;—secondly, the forcible abduction of any woman with intent to marry or defile her; and—thirdly, the unlawful abduction of a girl under the age of sixteen out of the possession of her parents or guardians.

I. Abduction of Women on Account of their Property.

The 24 & 25 Vict. c.100, s.53, enacts, that "where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be a presumptive or co-heiress, or presumptive next of kin, or one of the presumptive next of kin to any one, having such interest, whosoever shall, from motives of lucre, take away or detain such woman, against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one, out of the possession of, or against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or imprisoned for any term not exceeding two years, with or without hard labour, and whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she shall have any such interest, or which shall come to her as such heiress, co-heiress or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery in England or Ireland shall, upon any information at the suit of the Attorney-General, appoint. The 9 Geo. IV. c. 31, s. 19, and the Irish Act, 10 Geo. IV. c. 34, s. 23, are repealed, and the above section is enacted in their place for both England and Ireland.

Abduction of a woman of any age on account of her property against her will.

Fraudulent abduction of a woman under the age of twenty-one years, on account of her fortune, against the will of her parents or guardians.

For the general clauses affecting all the provisions of this Act, see *post*, "Malicious Injuries to the Person," Vol. V., 24 & 25 Vict. c. 100, ss. 66-77.

It is not necessary that an actual marriage or defilement should take place. Under the first part of the present enactment, the taking or detaining from motives of lucre and against the will of the woman, coupled with an intent to marry or carnally know, and under the second part of the same enactment, the fraudulent allurement, &c., of a woman under twenty-one, out of the possession of or against the

1. *On account of Property.*

Taking or detaining "against her will."

will of her parent or guardian, coupled with the intent to marry or carnally know, respectively constitute the offence. The taking under the first part of the section must be against the will of the woman; but it would seem that, although it be with her will, yet, if that be obtained by fraud practised upon her, the case will be within the Act. (*Wakefield's case, Lancaster, March Assizes, 1827, Dea. C. Law, 4.*) Now, moreover, the second part of the section expressly contemplates the case of a girl under twenty-one, whose co-operation has been obtained by the defendant by influence over her mind, and who has been taken out of the possession of her parent or guardian by means of a fraud practised upon them and against their will. (*The Queen v. Yore, 1 Jebb & Symes, Ir. Rep. 563.*) If a girl, under twenty-one, is taken away against her own will, or her consent is obtained through fear, that case would be within the first part of the section. (*Ib.*)

It is no excuse that the woman was at first taken away with her own consent, if she afterwards refuse to continue with the offender, because, if she so refuse, she may from that time as properly be said to be taken against her will as if she had never given her consent at all, for, till the force was put upon her, she was in her own power. (1 *Hawk. c. 16, ss. 7-11*; 1 *Russ. 942, 4 ed. by Greaves.*) Moreover, the detaining against her will is an offence. It seems, also, it is not material whether a woman so taken contrary to her will at last consents thereto or not, for if she were in force at the time, the offence is complete at the time of the taking, and the offender is not to escape from the provisions of the statute by having prevailed over the weakness of the woman by such means. (*Fulwood's case, Cro. Car. 488*; *Swenden's case, 5 St. Tr. 459*; 1 *Hawk. c. 16, s. 8.*)

Indictment.

The indictment must set forth that the woman taken away had the property, or show that she was heiress presumptive, &c., as is required by the Act, in order to show the defendant's interested motives. (*Moulin v. Sir G. Dallison, Cro. Car. 484.*) It must also be alleged that the taking was against her will, and that it was for lucre; (*Bruton v. Morris, Hob. 182*; 1 *Hawk. c. 16, s. 5*;) and, with respect to a girl under twenty-one, that the taking was out of the possession of the parent and guardian, was fraudulent or against his or her will, and, in either case, with an intent to marry or carnally know.

Venue.

By 7 Geo. IV. c. 64, s. 12, where a felony or misdemeanour is begun in one county and completed in another, the venue may be laid in either county, in the same manner as if it had been wholly committed therein.

Not triable at quarter sessions.

This offence is not triable at quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

Evidence.

To sustain the indictment the prosecutor should look to the averments in it, and prove them accordingly in the order stated in such indictment: As that the woman was possessed of or had an interest in the real or personal estate, or was presumptive heiress or co-heiress, or presumptive next of kin, or one of them, to some one having the property required by the Act. It should be proved that the defendant, from motives of lucre, and by force or fraud, took away or detained the person mentioned in the indictment against her will; or if she be under the age of twenty-one years, that he took her away fraudulently out of the possession of, and against the will of her parent or guardian. (*Reg. v. Burrell, 33 L. J. M. C. 54*; *L. & C. 354, S. C.*) The jury ought not to convict in the former case unless they are satisfied that the prisoner committed the offence from motives of lucre; but evidence of expressions used by the prisoner respecting the property of the lady, such as his stating that he had seen the will of one of her relatives (naming him), and that she would have 220*l.* a year, are important for the consideration of the jury in coming to a conclusion whether the prisoner was actuated by motives of lucre or not. (*Reg. v. Barrett, 9 Car. & P. 357.*) A prisoner was taken into custody at the house of his brother

on a charge of abduction; when he was taken a letter was found in a writing desk in the room where he and his brother were. The letter was directed to a person in the neighbourhood of the prisoner's late residence. The police officer was going to open it, when the prisoner told him that it had nothing to do with the business he had come about: held, that the letter was receivable in evidence on the trial of the prisoner for the abduction. *Ib.*

In case of marriage actually taking place, the party, injured, though the force continued until the time of marriage, will be a good witness for or against the offender, because she is not his wife *de jure*, and may herself swear to the compulsion; *Swendon's case*, 5 *Harg. St. Tr.* 456; *Brown's case*, 1 *Ventr.* 243; *Fullwood's case*, *Cro. Car.* 488; *R. v. Perry*, 1 *Hawk. c.* 16, s. 13; and the better opinion seems to be that she is still competent, notwithstanding her subsequent assent to the marriage, and her voluntary cohabitation, for otherwise the offender would take advantage of his own wrong. (*R. v. Wakefield, ubi sup.*; 2 *Lew. C. C.* 279, *S. C.*; 1 *East, P. C.* 454; 1 *Hale*, 301; 3 *Chit. Cr.* 817, n. 7; *Taylor on Ev.* 3 ed. 1106.) So in Ireland, upon an indictment on the repealed Act, 10 Geo. IV. c. 34, s. 23, now re-enacted as to England and Ireland, for the fraudulent abduction of an heiress under eighteen years of age, the lady, who had gone through a marriage ceremony, was admitted as a witness for the prosecution. (*R. v. Yore*, 1 *Jebb & Symes*, 563, where *R. v. Wakefield, ubi sup.* was commented on.)

The 1 Vict. c. 85, s. 11, is now repealed by the 24 & 25 Vict. c. 95, and if, therefore, the evidence is not strong enough to show the use of force or motive, the defendant can no longer be convicted of an assault under this indictment.

The crime is a felony, and punishable with penal servitude not exceeding fourteen years, and not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour; (24 & 25 Vict. c. 100, s. 53;) and either in the common gaol or house of correction; (*Id.* s. 69;) and the offender is rendered incapable of taking any estate or interest in the lady's property.

3. *Girls under Sixteen.*

Witnesses.

Cannot be convicted of an assault.

Punishment.

II. *Forcible Abduction of Women.*

The 24 & 25 Vict. c. 100, s. 54, enacts, that "Whoever shall by force take away or detain against her will any woman of any age with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour."

No actual marriage or carnal knowing is necessary to complete the offence. There must be a taking or detaining *by force*, with the intent to marry or carnally know. The observations upon the last section will apply for the most part to this. It may be that manual force may not in all cases be necessary, and that though no actual force was used, yet if the taking away was accomplished under the fear and apprehension of a present immediate threatened injury, depriving the woman of freedom of action, the statute would be satisfied. (See *Reg. v. Yore, ubi sup.*)

The offence is not triable at quarter sessions. (5 & 6 Vict. c. 38.)

Not triable at sessions.

III. *Abduction of Girls under Sixteen.*

The 24 & 25 Vict. c. 100, s. 55, enacts, that "Whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age

3. Girls under Sixteen.

of sixteen years, out of the possession of and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and, by section 69, in a common gaol or the house of correction.

This provision was passed in order to meet those cases where the girl is of so tender an age that she might be easily imposed on, and her consent obtained.

An illegitimate child appears to be within the Act. (*R. v. Cornforth and others*, 2 *Str.* 1162; better reported in *Bott*, by *Const. R. v. Sweeting*, 1 *East*, *P. C.* 457.) Up to the age of sixteen a father is entitled to a habeas corpus to get back a daughter, though she may wish to stay away from him. (*R. v. Howes*, 30 *L. J. M. C.* 48; 3 *E. & E.* 332, *S. C.*) After the death of the father the mother retains her authority though she marries again, and the assent of the second husband is not material. (*Ratcliffe's case*, 3 *Rep.* 39.) But the statute extends only to the custody of the mother where the father has not disposed of the custody of the child to others. (*Id.*) It seems that if the taking were with the consent of the parent or person having the charge of the child, any subsequent dissent could not do away with that approval. (*Calthorpe v. Axwell*, 3 *Mod.* 169; 1 *East*, *P. C.* 457.) Under a former Act it was holden that if a parent place a daughter under the care of another, who, by collusion, marries her to his own son, the case was not within the Act if the marriage were solemnized within the parish church, at a canonical hour, and without any attempt at privacy. (3 *Mod.* 85.) So, where a young woman persuaded a girl under sixteen, who was in service, to go away from her place to London, telling her that her (the defendant's) mother wanted a little girl as a servant, and would give her 5*l.* wages, and the girl left her place voluntarily for that purpose, this was held by *Parke*, *B.* and *Coleridge*, *J.*, not to be a taking within the statute. (*R. v. Meadows*, 1 *C. & K.* 399; see as to this case, *Reg. v. Kipps*, 4 *Cox*, *C. C.* 167; *R. v. Mankletow*, 1 *Dears*, *C. C.* 161, 164.) But where the girl was persuaded by the defendant to leave her father's house and go away with him without the father's consent, and, accordingly, left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and they then went away together, that was held to be within the act. (*R. v. Mankletow*, 1 *Dears*, *C. C.* 159; *R. v. Kipps*, 4 *Cox*, *C. C.* 167; *R. v. Handley and another*, 1 *Fost. & Fin.* 648.)

It is thus immaterial whether the girl consent or not, or even if the proposal for flight is made by the girl herself. (*R. v. Biswell*, 2 *Cox*, *C. C.* 279; *R. v. Twisleton*, 1 *Lev.* 257; 1 *Sid.* 387; 2 *Keb.* 32; 1 *Hawk.* c. 16, s. 10, p. 127.) Where the defendant went by night to the girl's father's house, and placed a ladder against her window, and held it for her to descend, which she did, and eloped with him, this was held to be a taking of her out of the possession of her father, although she herself proposed the plan to the defendant. (*R. v. Robins*, 1 *Car. & K.* 456.)

To pick up a girl in the streets and take her away, is not to take her out of the possession of any one. (*Reg. v. Green*, 3 *F. & F.* 274.)

If the parent have countenanced the daughter in a lax course of life, by permitting her to go out alone at night and dance at public houses, from one of which she was taken away, it cannot be said to have happened against the parent's will (*Reg. v. Primelt*, 1 *Fost. & Fin.* 50; *R. v. Frazer*, 8 *Cox*, *C. C.* 446.)

A moral force, such as to create a willingness on the girl's part to leave her father's house, must be used, for if her going were entirely voluntary there would be no taking. (*Reg. v. Handley and another*, 1 *F. & F.* 648; *Reg. v. Robb*, 4 *F. & F.* 59; see *R. v. Meadows*, *supra*.)

What a taking.

Against the will.

Taking must be by moral force, at least.

It is not necessary that the taking away should be for a permanency; it is sufficient if the temporary keeping of the girl be inconsistent with the parents' possession. (*R. v. Timmins*, 1 *Bell. C. C.* 276; 30 *L. J. M. C.* 45; *R. v. Baillie*, 8 *Cox, C. C.* 238; *R. v. Frazer*, *id.* 446.)

The absence of a corrupt or improper motive does not legally justify the taking of the child, still if the prisoner took her away, under an honest belief that he was entitled to the custody of the child, he would be entitled to be acquitted. (*Reg. v. Tinkler*, 1 *Fost. & Fin.* 513.)

The prosecutor should be prepared to prove that the defendant took the girl out of the charge of her father, or of the person having the lawful care or charge of her, and against his will, and that she was under the age of sixteen, and unmarried. Any of these parties may be called for the purpose. It is no defence that the defendant did not know her to be under sixteen, or might suppose from her appearance that she was older (*R. v. Robins*, 1 *C. & K.* 451), or that he did not know he was acting contrary to law in taking her away. (*R. v. Tinkler*, 1 *Fost. & Fin.* 513.)

The offence is a misdemeanour, and punishable by imprisonment not exceeding two years, with or without hard labour. (24 & 25 *Vict. c.* 100, s. 55.)

This offence is not triable at quarter sessions. (5 & 6 *Vict. c.* 38, s. 1.)

As to accessories, see 24 & 25 *Vict. c.* 100, s. 67; and title, "Accessory," *post.* p. 16.

4. Forms.

Taking need not be for permanency.

Evidence.

Accessory.

IV. Forms.

Warrant of Commitment.

To the constable of _____, and to the keeper of the [house of correction], at _____, in the said [county] of _____

Whereas A. B. was this day charged before me, J. S., one of Her Majesty's justices of the peace in and for the said (county) of _____, on the oath of C. D., of _____ [farmer], and others, for that he, the said A. B., on the _____ day of _____, at the parish of _____, in the said county, feloniously, and from motives of lucre, did take away and detain a certain woman, named E. F., against her will, with intent her, the said E. F., to marry [or "carnally know," or "to cause to be married," or "carnally known by one F. G.," or "by some person whose name is unknown"], she, the said E. F., at the time she was so taken away and detained by the said A. B., then having a certain present and absolute legal interest in certain real and personal property [or being the heiress or co-heiress presumptive to a person having an interest in certain real property] [or being the presumptive next of kin to a person, or one of the presumptive next of kin, having an interest in certain personal property]. Contrary to the statute, &c.

(1.) Commitment on 24 & 25 *Vict. c.* 100, s. 53, for abduction of a woman on account of her property.

These are, therefore, to command you, the said constable of _____, to take the said A. B., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said [house of correction], to receive the said A. B. into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law. Given under my hand and seal this _____ day of _____, in the year of our Lord _____, at _____ in the [county aforesaid]. S. S. (L. S.)

— Commencement as usual, stating the offence as follows.] For that he, the said A. B., on &c., at &c., feloniously and fraudulently did allure [or "take away," or "detain"] a certain woman named C. D., being under the age of twenty-one years, to wit, of the age of _____ years, then having a certain interest in certain real [or "personal"] estate [&c., as the case may be], out of the possession of and against the will of one E. F., her father [or "mother," &c.], with intent, &c. [as in No. 1], contrary to the statute, &c.

(2.) Commitment on 24 & 25 *Vict. c.* 100, s. 53, fraudulently alluring a woman under twenty-one from parents with intent to marry.

4. Forms.

(3.) Commitment on 24 & 25 Vict. c. 100, s. 54, for by force taking a woman with intent, &c.

(4.) Commitment on 24 & 25 Vict. c. 100, s. 55, for the abduction of a girl under sixteen.

(5.) Indictment on 24 & 25 Vict. c. 100, s. 53.

For that he, the said A. B., on &c., at &c., feloniously by force did take away [or "detain"], against her will, a certain woman named C. D., with intent, &c. [as in No. 1], contrary to the statute, &c.

For that he, the said A. B., on &c., at &c., unlawfully did take [or "cause to be taken"] one E. F., then being unmarried and under the age of sixteen years, to wit, _____, and against the will of C. D., her father [or "mother," or "person having the lawful care or charge of her"], and contrary to the statute, &c.

— (venue) *The jurors for our Lady the Queen, upon their oath present, that C. D., on the _____ day of _____, A.D. _____, feloniously, and from motives of lucre, did take away [or "detain"] one A. B. against her will, she, the said A. B., then* having a present and absolute interest [or "any interest legal or equitable, present or future, absolute, conditional, or contingent"] in certain real estate ["real or personal"], to wit, in certain lands situate at, &c. [or "to wit, in certain goods or chattels," describing them generally], with intent her, the said A. B., to marry [or "carnally know or to cause her to be married or carnally known by any other person"], against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity [add counts if the case be in any way doubtful as to the proofs, varying the statements as to the property of the woman and as to the intent].*

(6.) Indictment on the same Act, the woman being heiress presumptive.

Proceed, as in the above form, to the asterisk, and then] being the heiress [or "co-heiress"] presumptive to one E. F., having a present interest [or "any interest, &c."] in certain real estate, to wit, in certain lands, tenements, and premises situate at, &c., with intent her, the said A. B., to marry [or "carnally know"], against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

(7.) Indictment on same Act, she being presumptive next of kin.

Proceed as in the above form, No. 5, to the asterisk, and then] being the presumptive next of kin [or "one of the presumptive next of kin"] to one E. F., having a personal interest [or "any interest, &c."], in certain personal estate, to wit, in certain goods and chattels, that is to say [describe the personality generally], with intent her, the said E. F., to marry [or "carnally know"] against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

(8.) Indictment for abduction of a girl under twenty-one.

Commencement as in the above form, No. 5] feloniously and fraudulently allured ["took away or detained"] one A. B., out of the possession and against the will of C. D., her father [or "mother"], she, the said A. B., then being under the age of twenty-one years, and having a certain present interest in [describe the interest and property as above in form No. 5], with intent her, the said A. B., to marry [or "carnally know" or "cause to be married or carnally known by any other person"], contrary to the statute, &c., [add counts, if necessary, varying the statements as to the property, possession, or intents to meet the proofs.

(9.) Indictment for forcible abduction of a woman on 24 & 25 Vict. c. 100, s. 54.

Commencement as in form, No. 5] feloniously and by force did take away [or detain], one A. B., against her will, with intent her, the said A. B., to marry [or "carnally know" or "cause to be married or carnally known by any other person"] against the form of the statute, &c. [If the intent is doubtful, add a count stating it to be to "carnally know," or to cause her to be married to one E. B., or to some person to the jurors unknown, or to cause her to be carnally known by, &c.]

(10.) Indictment on 24 & 25 Vict. c. 100, s. 55, for abduction of girl under sixteen.

Commencement as in form, No. 5] unlawfully did take [or cause to be taken] one A. B., out of the possession and against the will of E. F. her father, [or "mother, or other person having the lawful care or charge of her,"] she the said A. B. being an unmarried girl, and under the age of sixteen years, to wit, _____ of the age of _____ years; against the form of the statute in such case made

and provided, &c. [If necessary, add a count stating E. F. to be "a person having the lawful care and charge of the said A. B.," or "or that the defendant unlawfully did cause to be taken one A. B.," &c.].

Abortion.

Abortion.

IF a woman be with child, and a man administer to her a potion to destroy the child within her, and she take it for that purpose, and it work so strongly that it kills her, it has been said that this is murder; for that the taking the drug for that purpose was a misdemeanour at common law, and that as in the perpetration of a misdemeanour death ensued, the woman was guilty of murder, of *felo de se*, and the man was accessory to the fact before the murder. (1 *Hale*, 429, 430; *R. v. Russell*, 1 *Moo. C. C.* 356.) So in *Reg. v. Gaylor*, (1 *D. & B.* 288,) a prisoner was held to have been rightly convicted of the manslaughter of his wife where her death was caused by a drug, which the prisoner had purchased and given to her for the purpose of procuring abortion, she believing herself to be pregnant, although in reality she was not, and he being absent at the time she took it; but where the prisoner, under the influence of threats of self-destruction made by a woman pregnant by him, procured the poison with a full knowledge of the purpose to which it was to be applied, but he did not administer it to her or cause her to take it, and she took it, and in consequence died, it was held, that he could not be convicted of murder, as being accessory before the fact to the murder of herself by the woman, even if she could be considered to be a *felo de se*, as in *Russell's case*. (*R. v. Fretwell*, 1 *Leigh. & C.* 161; 31 *L. J. M. C.* 145.) This case would now probably be met by the 59th section of the present Act.

When murder
at Common Law.

The distinction between the cases seems to be that in the former the prisoner instigated the woman to take the poison, but in the latter did not wish her to do so; but it was neither murder nor manslaughter at common law to destroy the unborn child of a pregnant woman, while yet within the womb, because it was not yet in *rerum natura*, and it could not be legally known whether it were killed or not; (1 *Hale*, 453;) though if the child were born alive and afterwards died of any poison or bruises it received in the womb, it was murder in whomsoever administered or gave them. (1 *Hawk.* c. 13, s. 16.)

By Statute.—This latter offence is now defined by the 24 & 25 Vict. c. 100, and the former Acts relating to this offence, namely, the 7 Will. IV. and 1 Vict. c. 85, the 9 Geo. IV. c. 31, and the 43 Geo. III. c. 58, are wholly repealed.

The 58th section of the 24 & 25 Vict. c. 100 is partly framed on the 26th section of the 7 Will. IV. and 1 Vict. c. 85, and enacts that "every woman *being with child* who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, *whether she be or be not with child*, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Administering
drugs or using
instruments to
procure abortion.

And by 24 & 25 Vict. c. 100, s. 59, "Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument

Supplying drugs,
&c., to cause
abortion.

Abortion.

or thing whatsoever, knowing that the same is intended to be unlawfully used or employed, with intent to procure the miscarriage of any woman, *whether she be or be not with child*, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour."

In order to constitute an offence under the first part of the 58th section, the woman must be with child, though not necessarily quick with child, and at common law this was no offence, unless the woman were pregnant. (*Gaylor's case*, 1 D. & B. 299, *per Pollock*, C. B.)

Under the 58th section, the poison or other noxious thing must have been administered, or the instrument used with the intent to procure the miscarriage. It must be proved according to the fact stated in the indictment, that the woman administered, &c., to herself, or that the person administered, &c., or caused to be taken, &c., the drug, &c., as therein stated, and that the drug, &c., was noxious.

It is to be observed that the 59th section of the present Act is an entirely new provision and auxiliary to the enactments contained in the old Acts, and treats the crime of procuring or supplying the poison, &c., as one of a totally different character from that of administering, or causing it to be taken. This section meets the case of *R. v. Fretwell*, (1 L. & C. 161,) above mentioned. In determining whether the prisoner should be indicted for the felony or the misdemeanour, the effect of the evidence with reference to the following decisions should be considered. Where the prisoner supplied a drug to procure abortion to a pregnant woman, who applied and paid for it, and then gave her directions how to take it, and the woman some little time after, but in the *prisoner's absence*, took the drug as directed, it was held, that the prisoner had caused the drug to be taken by the woman, so as to be rightly found guilty of the felony under the repealed statute of 7 Will. IV. and 1 Vict. c. 85, s. 6. (*The Queen v. Wilson*, *Dears & B.* 127; 26 L. J. M. C. 18; *Queen v. Farrow*, *Dears & B.* 164.) So if a servant put poison into a coffee pot which contains coffee, and when her mistress comes down to breakfast, the servant tells the mistress she has put the coffee pot there for her (the mistress) breakfast, and the mistress drink the poisoned coffee, this is "a causing the poison to be taken" within the meaning of the repealed statute of 9 Geo. IV. c. 31. (*R. v. Harley*, 4 C. & P. 369). It is therefore not necessary that there should be an actual administering by the hand of the prisoner (*Id.*). Where the prisoner was indicted for having administered to, and caused to be administered to and taken by the prosecutrix, a poison with intent to murder her, and the proof was that the defendant gave her a bit of cake which contained arsenic and sulphate of copper, but she merely put a bit of it into her mouth and spit it out again, and did not swallow any part of it, it was held that that did not constitute an administering within the meaning of the statute. (*Cadman's case*, 1 Moo. C. C. 114).

Upon an indictment for supplying savin, knowing that the same was intended to be unlawfully used by one S. C., against the 59th section, it appeared that S. C. did not intend to take the savin, nor did any other person so intend, except the prisoner himself, and it was held that it was sufficient to constitute the offence that the prisoner knew that he intended the savin to be used to procure miscarriage. (*Reg. v. Hillman*, L. & C. 343; 33 L. J. M. C. 60, S. C.).

The drug, so administered must be proved to be a poison or other noxious thing, independently of the ill effect produced; thus, where the stuff administered on being analysed was found to contain a quantity of starch, of some plant and some woody fibre, and in the judgment of the analyst was of a harmless character, and such as would not procure a miscarriage, but the prosecutrix said she felt dizzy and

What is administering, &c.,

The intention to use may be only in the mind of the person supplying.

stupid in the head after taking it, and the jury found that the thing was noxious, a conviction under the 59th section of the present Act was nevertheless quashed, on the ground that there was no evidence to go to the jury that it was noxious; and *Pollock, C. B.*, said the administration of pure water is no offence within that section.

It is to be observed that the 59th section upon which that case was decided, contains the words, or "any instrument or thing whatsoever." This case is opposed to *R. v. Coe* (6 C. & P. 403.) If the thing administered is noxious, it does not seem to be material whether its properties are such that it is calculated or likely to procure abortion, but the intent to procure the miscarriage must be proved.

The felony is not triable at quarter sessions (5 & 6 Vict. c. 38, s. 1), but an indictment framed on the 59th section for the misdemeanour would be triable by that jurisdiction, though probably the justices would do right to commit to the assizes.

The felony is punishable with penal servitude for life, or for any term not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (24 & 25 Vict. c. 100, s. 8); and the misdemeanour with penal servitude for three years, or imprisonment not exceeding two years, with or without hard labour (24 & 25 Vict. c. 100, s. 59). The imprisonment may be in the common gaol or house of correction. (*Id.* s. 69). The solitary confinement must not exceed one month at any one time, and not exceeding three months in any one year.

Every principal in the second degree, and every accessory before the fact to the felony, is punishable in the same manner as the principal in the first degree, and every accessory after the fact to the felony may be imprisoned for any term not exceeding two years, with or without hard labour; and whosoever shall counsel, aid, or abet the commission of the misdemeanour may be proceeded against, indicted, and punished as a principal offender (24 & 25 Vict. c. 100, s. 67).

The general Act relating to accessaries and abettors is the 24 & 25 Vict. c. 94. (See tit. "*Accessory*," post, p. 16.)

Abortion.

Where triable.

Punishment.
Felony.

Misdemeanour.

Principals in
second degree,
and accessaries.

Forms.

Commencement as usual, p. 11.] *for that she, the said C. D., on &c., at &c., being then with child, with intent to procure her own miscarriage, did unlawfully and feloniously administer to herself one drachm of a certain poison, [or "noxious thing,"] to wit, [or "did use a certain instrument, or means to wit, ,"] contrary to the statute, &c.*

(1.) Commitment for administering to herself drugs, poison, &c., to procure abortion;

Commencement as usual, p. 11.] *for that he, the said C. D., on the day of at the parish of in the said county, unlawfully and feloniously did administer to [or "cause to be taken by,"] one S. L., one ounce weight of a certain poison called [or "noxious thing,"] with intent then and thereby to cause the miscarriage of the said S. L., contrary to the statute, &c.*

(2.) or for administering to another woman,

For that he, the said C. D., on &c., at &c., unlawfully and feloniously did use a certain instrument called , with intent, &c.

(3.) Using instrument with same intent.

Commencement as usual, p. 11.] *for that he, the said C. D., on &c., at &c., unlawfully did supply [or "procure,"] one drachm of a certain poison [or "noxious thing,"] called [or "a certain instrument or thing called ,"] he the said C. D. knowing that the same was intended to be unlawfully used ["employed,"] with intent to procure the miscarriage of a certain woman named S. L., contrary to the statute, &c.*

(4.) For supplying, &c., poison, &c., for the purpose knowingly.

Forms.

(5.) Indictment for woman administering poison to herself with intent, &c.

*The jurors for our Lady the Queen upon their oath present, that C. D., on the day of * and being then with child, with intent to procure her own miscarriage, did unlawfully and feloniously administer to herself one drachm of a certain poison [or "noxious thing,"] called [or "did use a certain instrument or means,"] to wit ,] contrary to the statute.*

(6.) Indictment for administering poison, &c., to a woman with intent to procure abortion.

*Commence as in preceding form, No. 5, to the * and then,] unlawfully and feloniously did administer to [or "cause to be taken by one S. L., one ounce weight of a certain poison called [or "noxious thing,"] with intent then and thereby to cause the miscarriage of the said S. L., contrary to the statute, &c.*

(7.) For using instrument with the like intent.

*Commence as in preceding form, No. 5, to the * and then,] unlawfully and feloniously did use a certain instrument called a [or "other means,"] with intent then and thereby to cause the miscarriage of the said S. L.*

(8.) For supplying, &c., poison for the purpose.

*Commencement as usual to * and then,] unlawfully did supply [or "procure,"] one drachm of a certain poison [or "noxious thing," or "any instrument or thing called ,"] he, the said C. D., then knowing that the same was intended to be unlawfully used, and employed with intent to procure the miscarriage of one S. L.*

Accessory. (a)

A PARTY guilty of an offence may be either a *principal* in the first degree, a *principal* in the second degree, or an *accessary* before or after the fact.

I. *Of Principals in General*, 17.

II. *Of Accessaries in General*, 23.

[24 & 25 Vict. c. 94.]

III. *Of Accessaries before the Fact*, 24.

[11 & 12 Vict. c. 43; 24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100.]

IV. *Of Accessaries after the Fact*, 26.

[24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100.]

V. *Of the Proceedings against Accessaries*, 27.

1. *In General*, 27.

2. *Indictment against*, 29.

3. *Trial of*, 33.

4. *Evidence*, 35.

5. *Punishment of*, 37.

[7 Will. IV. & 1 Vict. c. 88, s. 4; c. 36, s. 35; c. 66, s. 25; 24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100.]

VI. *Forms*, 37.

(a) As to Accessaries in general, see 1 Chit. C. L. 256 to 275; Arch. Crim. Law; Deacon's Crim. Law, title "Ac-

cessary;" 1 Russ. Crim. Law. As to receiver of stolen goods, see tit. "Larceny," Vol. III.

I. Of Principals in General.

1. Of Principals.

In order to ascertain who are accessories, it will be expedient to inquire in the first place who are principals.

A principal in the first degree is he that is the actor or actual perpetrator of the offence. (1 *Hale*, 233, 615.) But it is not necessary that the act should be perpetrated by his own hands, or even that he should be present, for if one lay poison for another who takes it and is killed, he who laid the poison though absent when it was taken, is a principal in the first degree, (*Vaux's Case*, 4 *Co. Rep.* 44 b,) and the turning out a wild beast with intent to do mischief, so that thereupon death ensues, is murder in the party offending; (*Fost.* 349; 1 *Hale*, 514;) and if an offence be committed through the medium of an innocent agent, the employer though absent when the act is done, is answerable as a principal in the first degree, (*Reg. v. Bull*, 1 *Cox C. C.* 281; *R. v. Michael*, 2 *Moo. C. C.* 120; 9 *C. & P.* 356; *R. v. Clifford*, 2 *C. & K.* 202; *R. v. Giles*, 1 *Moo. C. C.* 166,) and an agent is deemed to be innocent within the above rule, who lends himself to the offence for the purpose only of detecting and punishing his employer. (*R. v. Bannen*, 2 *Moo. C. C.* 309; *Reg. v. Valler*, 1 *Cox C. C.* 84.) And if a child under the age of discretion or any other instrument excused from responsibility for his actions by defect of understanding, ignorance of the fact, or other cause be incited to the commission of murder or any other crime, the inciter though absent when the fact was committed, is, *ex necessitate*, liable for the act of his agent, and a principal in the first degree, (*Fost.* 349; 1 *East. P. C.* 118; 1 *Hawk.* c. 13, s. 7; *R. v. Palmer*, 1 *N. R.* 96,) and *a fortiori* if he be present; (*R. v. Tyler*, 8 *C. & P.* 616;) but if the instrument, though of weak intellect, be aware of the consequences of the act, he is a principal in the first degree, and the employer if he be absent when the fact is committed, is an accessory before the fact, (*R. v. Williams*, 1 *Den. C. C.* 39; *R. v. Stewart*, *R. & R.* 363,) or if he be present is a principal in the second degree. It is a question for the jury whether a child used as an agent were an innocent agent or not. (*Reg. v. Mantley*, 1 *Cox C. C.* 104.) But, if a person come casually, not of the confederacy, though he hindered not the felony, he is neither principal nor accessory, though he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. (*Hale Sum.* 216; 2 *Hawk.* c. 29, s. 10.)

(1.) Of principals in general.

Principals in the first degree.

Principals in the Second Degree.—A principal in the second degree is he who is present aiding and abetting, with a felonious intention, to commit the felony at the time the offence was committed. (1 *Hale*, 233, 615.) In 1 *Russell on Crimes*, ch. 3, p. 49, ed. 4, it is said the distinction between principals in the first, and principals in the second degree, appears to have been unknown to the most ancient writers on our law, who considered the persons aiding and abetting in no other light than as accessories at the fact. But as such accessories were not liable to be brought to trial till the principal felons were convicted or outlawed, a rule productive of much mischief, and as the course of justice was frequently arrested by the death or escape of the principal, or from his remaining unknown or concealed, with a view to obviate this mischief, the judges by degrees adopted a different rule, and made them principals in the second degree. (*Fost.* 347; *R. v. Hughes*, 29 *L. J. M. C.* 77, *per Williams, J.*) If several by acting in concert induce by fraud a man to trust one of them with the possession of his money, in the presence of the others, and that one hand the money over to another, and then entices the owner to leave the place and goes off with him, in order that the one who then has the money may carry it off, and does so, he that went out with the prosecutor and did not return is guilty, as a principal, of larceny. (*R. v. Handley*, *R. & R.* 305.) So if a man and

Principals in the second degree.

1. Of Principals.

woman go out together to a river with the agreed object of drowning themselves, and the man in pursuance of that agreement throws himself into the river, and the woman following his example with the same object, throws herself into the river also and is drowned, but he survives, he is guilty of murder as a principal in the second degree. (*R. v. Dyson*, *R. & R.* 523.)

Duels.

So all persons who are present, aiding, abetting, and assisting in a deliberate duel that ends fatally, are guilty of murder, as principals in the second degree, and this rule extends to the seconds and aiders of the deceased duellist, though Lord Hale has expressed a doubt as to the correctness of this latter proposition. (*R. v. Cuddy*, 1 *C. & K.* 210; *R. v. Young*, 8 *C. & P.* 645; 1 *Hale*, 452.)

So if two persons, each in a horse and cart, drive furiously along a road, one behind the other, inciting one another thereby to an unlawful act, and the horse and cart in advance is driven over a man and kills him, the driver of the first cart is guilty of manslaughter, as a principal in the first degree, and the other as principal in the second degree. (*R. v. Swindall*, 2 *C. & K.* 230.)

Common purpose.

But the common purpose must exist to make a person present, but not the actual actor, a principal: thus, where one of two persons walking close to the prosecutrix, stole her purse, and the two immediately afterwards walked away together, and the one handed something to the other, the latter was held to be rightly convicted of receiving, upon the finding of the jury, that he did not participate in the actual theft. (*Reg. v. McEvin*, *Bell C. C.* 20.)

So again, where three soldiers went together to rob an orchard: two got on a pear tree and the third stood at a gate with a drawn sword in his hand, and the owner's son coming by collared the man at the gate, and asked him what business he had there, whereupon the soldier stabbed him; it was ruled to be murder in the man who stabbed, but that those in the tree were innocent, because it was considered that the purpose they had in common was to commit a small inconsiderable trespass, and that the man was killed upon a sudden fray without their knowledge, but that it would have been otherwise if they had all come thither with a general resolution against all opposers (*Fost.* 353; *Russell on Crimes*, 4 ed. vol. i. p. 55, and see note); but where two persons follow a man with intent to rob him, and in the course of the attempt the one kills him, they are both guilty of murder. (*R. v. Jackson*, 7 *Cox C. C.* 357.)

Presence.

The presence need not be an actual standing within sight or hearing of the act, if there is an active co-operation in the crime at the time of its commission, as if several parties set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him—some to commit the fact, others to watch at proper distances and stations to prevent a surprise, or to favour, if need be, the escape of those who are more immediately engaged—they are all, provided the fact be committed, in the eye of the law present at it; for it was made a common cause with them—each man operated in his station at one and the same instant towards the same common end, and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise. (*Fost.* 350.) If one burglar stands outside a window while another plunders the house and hands out the goods to him, he is a principal in the second degree, and cannot be convicted as a receiver; (*R. v. Perkins*, 2 *Den. C. C.* 459; *R. v. Owen*, 1 *Moo. C. C.* 96;) and in case of stealing in a shop, if several are acting in concert, some in the shop and some outside, and the property is stolen by some of those in the shop, those who are on the outside are equally guilty as principals in the offence of stealing in a shop. (*R. v. Perkins*, *ubi sup.*; *R. v. Gogerley*, *Russ. & Ry.* 343; and see *R.*

v. *Owen*, 1 *Moo. C. C.* 96; *R. v. Borthwick*, 1 *Doug.* 207.) So if several persons come to a house with intent to commit an affray, and one be killed while the rest are engaged in riotous and illegal proceedings, though they are dispersed in different rooms, all will be principals in the murder. (*Dalt. J.*, c. 161; 1 *Hale*, 439; *Hawk. b.* 2, c. 29, s. 8.) All those who assembled themselves together with an intent even to commit a trespass, the execution whereof causes a felony to be committed, and continue together abetting one another till they have actually put their design into execution, and also all those who are present when a felony is committed, and abet the doing of it, are principals in the felony. And where persons combine to stand by one another in breach of the peace, with a general resolution to resist all opposers, and in the execution of their design a murder is committed, all of the company are equally principals in the murder, though at the time of the act some were at such a distance as to be out of view, but placed so as to prevent persons coming to the assistance of the party injured. (*Reg. v. Howell*, 9 *C. & P.* 437.) This is on the ground that the person who does the act is encouraged and emboldened in it from the hopes of present and immediate assistance from the abettor, whether he be within view of the fact or not.

If persons go out for the purpose of poaching, and some go into a wood and beat it, and others remain outside to keep watch for the gamekeepers, and only enter the wood to give notice of their approach, whereupon they all run away, it is the same thing as if they had all been engaged in beating for game in the wood. (*R. v. Passey*, 7 *C. & P.* 282; *R. v. Lockett*, *id.* 300.)

Upon an information for aiding and abetting a trespass in pursuit of game, it appeared that the alleged abettor drove the principal in a conveyance along a road, that the trap was stopped, and the principal got out, went into a field and shot a hare, he then returned into the turnpike road, where the trap had stopped for a minute or so, at the distance of from a hundred yards to a quarter of a mile, and gave the hare to the abettor; it was held that there was sufficient evidence to convict the abettor, and *Williams, J.*, then said a man would not be the less an aider and abettor, because he might be convicted as a principal. (*Stacey v. Whitehurst*, 34 *L. J. M. C.* 94; 18 *C. B. N. S.* 344, *S. C.*)

1. Of Principals.

Presence during the whole of the transaction constituting the offence is not necessary; it is sufficient to show that the offender assented to the felony, and was present aiding and abetting during the course of the criminal transaction, and before the completion of the offence. As when the servants of A. feloniously removed goods in the course of being conveyed in A.'s boats from a ship to a warehouse on shore, from one part of the boat to another, and concealed it under some rope without A.'s knowledge, and A., afterwards discovering what had been done, assisted his servants in removing the goods from the boat for the purpose of carrying it off, he was held a principal, since it was a continuing transaction; for, although as respects the servants, there was a complete asportation before A. took any part in the transaction, yet, as respects A., the goods being still in the boat were still properly deposited there for the purpose of being landed. (*R. v. Dyer*, 2 *East*, *P. C.* 767.)

Aiding and abetting.

Presence during the whole of the offence.

Where A. was employed by I. to draw oats in sacks from a vessel to the warehouse of I., and B. was employed by I. to load the sacks out of the vessel into the trams on which they were carried. The trams were the trams of A. By concert between them, B., whilst A. was absent taking a load in a tram to the warehouse, emptied oats out of two sacks which were on another tram close to the vessel into a nosebag, which he then placed under the tram. When A. returned in a few minutes afterwards to the vessel with an empty tram, he took the nosebag from under the tram where B. had placed it, and put it on his

1. Of Principals.

tram and drove off with it—B. then being on the vessel within a few yards of A. They were both convicted of the larceny, as it was deemed to be one transaction, in which both concurred, for they had both been present at some part of the transaction. (*Reg. v. Kelly*, 2. C. & K. 379.)

Where four prisoners were indicted for burglary, and two of them went with the third to the house where he was to secrete himself in the office, that during the night he might commit the robbery, and the door being latched they assisted him to gain admission by opening an umbrella to screen him while he entered. They went away soon after he got in, and were not seen near the place till after the robbery. It was held, that the lifting of the latch was a breaking and part of the transaction, and the two who were present at the commencement, were in law guilty of the robbery, and it was not necessary that they should be there during the whole of the transaction. (*R. v. Jordan*, 7 C. & P. 432.)

If several combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals. (*R. v. Bingley*, *Russ. & R. C. C.* 446; *sed vide R. v. Kelly*, *Russ. & R.* 421.) So if A. counsel B. to make the paper, C. to engrave the plate, and D. to fill up the names of a forged note, and they do so, each without knowing that the others were employed for that purpose, but knowing that some one was to be employed, B., C., & D. may be indicted for the forgery, and A. as an accessory; (*R. v. Dade*, 1 *Moo. C. C.* 307;) for, if several make distinct parts of a forged instrument, each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone in the absence of the others, who, however, know that it was to be executed by somebody. (*R. v. Kirkwood*, 1 *Moo. C. C.* 304.) But persons must assist in some part of the transaction, or be sufficiently near to give assistance, in order to be principals. Thus, where a man uttered a forged note at Portsmouth, and the concerted plan between him and two others was, that he was to return to them when he had passed the note, and divide the produce; the three had before been concerned in uttering another forged note, but at the time this note was uttering in Portsmouth the other two stayed at Gosport. The jury found all three guilty, but on a case reserved the judges were clear that as the other two were not present, nor sufficiently near to assist, they could not be deemed principals. (*R. v. Soares and others*, 2 *East*, P. C. 974; *R. & R.* 25; *R. v. Stewart and others*, *R. & R.* 363.)

Not sufficiently
near to give
assistance.

But mere proximity is not sufficient without active assistance; (*Hawk. b. 2, c. 29, s. 10*;) thus, he is not a principal in uttering a forged note who merely came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a little before he uttered it, joined him again in the street a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended. (*R. v. Davis*, *Russ. & Ry.* 113.)

So, if one of them have been apprehended before the commission of the offence by the other, he can be considered only as an accessory before the fact. (*R. v. Johnson*, C. & Mar. 218.)

The mere circumstance of going towards the place to which the stolen property was to be carried in the first instance, and assisting in carrying it home, will not make him assisting a principal in the second degree, unless at the time of the felonious taking he were within such a distance as to be able to assist in it, for the felony was complete before he interfered. (*R. v. Kelly*, *R. & R.* 421.) So, where two persons broke open a warehouse and stole thereout a quantity of butter, which they carried along the street thirty yards, and then fetched the prisoner, who being apprised of the robbery assisted in carrying away the property, it was holden, that he was not a principal

but only an accessory. (*R. v. King*, *R. & R.* 332; *R. v. M'Makin*, *Ibid.*)

So, if the party were actually present, to make him a principal he must do an act of aiding, assisting, and abetting. (*R. v. Young*, 8 *C. & P.* 644.) Thus, if two persons are fighting, and a third comes by and looks on, but assists neither, he is not a principal in the breach of the peace, (*Hale Sum.* 216; 2 *Hawk. c.* 29, s. 10,) though he may be fined for *misprision* if he neglect to exert himself to apprehend the offenders; but, if the third went there for the purpose of seeing the fighters strike one another, he is a principal in the breach of the peace; (*R. v. Perkins*, 4 *C. & P.* 537; *R. v. Murphy*, 6 *Car. & P.* 103; *R. v. Young*, 8 *C. & P.* 645;) and if he came to the fight by chance, but stays to applaud, or by his presence to encourage and embolden the fighters, he is a principal in the breach of the peace, although he did not say anything. (*R. v. Murphy*, 6 *C. & P.* 103; see *Reg. v. Howell*, 9 *C. & P.* 437.)

The wrongful act must be within the compass of the original design or unlawful purpose. (1 *East*, *P. C.* 257; *Fost.* 354, 355; *R. v. Plumer*, *Kel.* 109, 117.) Thus, if persons are present at a prize fight with the intention of aiding and abetting the fighters, and death results from the fighting, those present are guilty of manslaughter; but, if in the course of the fight the crowd become unruly and break into the ring, and some with bludgeons kill one of the fighters, taking the matter as it were out of the hands of the combatants, then persons merely present encouraging the fight would not be answerable, unless they were connected with that particular violence. (*R. v. Murphy*, 6 *C. & P.* 103.) So, if several are out for the purpose of committing a felony, and upon an alarm run different ways, and one of them maim a pursuer to avoid being taken, the others are not to be considered principals in such act. (*R. v. Wright*, *Russ. & Ry.* 99.) If persons go out by night with the purpose merely of poaching, and, meeting with a gamekeeper, set upon him, beat him, and leave him on the ground insensible, and after they had gone one of them return and rob the gamekeeper, he alone is guilty of the robbery; (*R. v. Hawkins*, 3 *C. & P.* 392;) but, though persons indicted for being present aiding and abetting a murder alleged to have been committed by a lunatic cannot be convicted on such a count, because there is no foundation on which the accessory crime can rest; yet, if they went out with a general purpose of resisting the lawful authorities, who, in the execution of their duty might interfere with them, and were aware that the lunatic had the purpose to murder, and were present aiding and abetting him in the commission of acts fatal to life, they were principals in the murder. (*R. v. Tyler*, 8 *C. & P.* 616.)

But it is essential that those present should have been aware that the intention to commit murder existed in the mind of the perpetrator of the act. (*R. v. Cruise*, 8 *C. & P.* 541; *R. v. Tyler*, *ubi sup.*) And, if a master assaults with malice prepense, and the servant, being ignorant of his master's malignant design, takes part with him, and death ensues, the servant is not an abettor of murder, but of manslaughter only. So, if an affray arise between two parties, and constables interfere and are killed, those who kill them, knowing their office, are principals in the first degree; those who abetted them, not knowing or having the means of knowing the constables' office, are guilty in the second degree of manslaughter only; and those who were present and concerned in the original affray, but desisted from interfering on the approach of the officers, are not at all concerned, for this was a new outrage, independent of the original quarrel. (1 *Hale*, 446; *R. v. Hawkins*, *ubi sup.*)

And, if persons have assembled together with a general though undefined purpose of setting the lawful authorities at defiance, they are answerable for everything done in the execution of it, and it is not necessary that their minds should have been bent on any defined and particular mischief. (*R. v. Tyler*, *ubi sup.*; 1 *Hawk. c.* 13, s. 51.)

1. Of Principals.

Participation.

The offence must be within the original intention.

The purpose need not be any settled and defined one.

Indictment

1. Of Principals.

against principals in second degree.

degree, either according to the fact or as principals in the first degree, and that whether the offence is one by common law or by statute; (*R. v. Crisham*, 1 C. & Mar. 187; *R. v. Gray*, 7 C. & P. 164; *R. v. Swindall*, 2 C. & K. 230;) for the punishment is the same. But it may be that a particular statute may omit to expressly mention aiders and abettors, and be construed not to extend to them, as where the Act is necessarily personal. (See *Sterne's case*, 1 Leach, 473.) So, if by particular statutes the punishment of principals in the second degree is different from that of those in the first degree, the former must be indicted according to the fact. If two persons are together inciting one another to the commission of an unlawful act from which death ensues, it is immaterial whose blow or act immediately caused the death, for the act of the one is the act of the other, and they are both liable upon an indictment as principals in the first degree. (*Reg. v. Swindall*, 2 C. & K. 230; *R. v. Dyson*, R. & R. 523.) So, where A. is indicted as having given the mortal blow, and B. and C. as present aiding and abetting, and upon the evidence it appeared that B. gave the blow, and A. and C. were only aiding and assisting, the evidence will maintain the indictment, and judgment be given against all, for it is only a variance, as in law the mortal blow is the act of all that are present aiding and abetting. (1 *East*, P. C. 350; *Fost*, 351.) So, upon an indictment against three as principals in the first degree for the simple act of shooting at the prosecutor, under the Black Act, was held sufficient. (3 T. R. 105.)

Upon an indictment charging the prisoner with aiding and assisting in a rape, contrary to the statute, and the statute made no mention of aiders and abettors, the prisoner was convicted as a principal. (*R. v. Crisham*, Car. & M. 187; and see *R. v. Gray*, 7 C. & P. 164; *R. v. Folkes*, 1 Moo. C. C. 354.)

And, where an indictment for shooting at a person contained two counts, the one charging A. as principal and B. as aiding, and the other charging B. as principal and A. as aiding, and it could not be proved which of the prisoners fired the gun, but it was satisfactorily shown that one of them fired the gun and the other was present aiding and abetting, a conviction on a general verdict of guilty was held right, for the counts substantially related to the same. (*R. v. Downing*, 1 Den. C. C. 52; *R. v. Towle*, R. & R. 314; acted upon in *R. v. Tyler*, 8. C. & P. 616; *R. v. Folkes*, *ubi sup.*)

Aiders and abettors in misdemeanours.

In Misdemeanours.—Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanour, whether the same be a misdemeanour at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender, 24 & 25 Vict. c. 94, s. 8. And, at common law, as we have seen, all persons taking part in a misdemeanour are principals.

Trial.

Trial.—The former doctrine, that principals in the second degree were only *accessaries* at the fact, is now exploded; (see 1 Ch. C. L. 256; *ante*, p. 17;) and in confirmation of this, principals in the second degree may be arraigned and tried before the principal in the first degree has been outlawed or found guilty; (1 *Hale*, 437; 2 *Hale*, 223; 9 Co. 67 b.;) and he may be convicted though the principal in the first degree has been acquitted. (1 *Leach*, 360; *Reg. v. Wallis*, 1 Salk. 334; 1 *Hale*, 437, &c.; 1 Ch. C. L. 260; *Rex v. Towle and others*, Russ. & R. C. C. 314; 3 *Price*, 145; 2 *Marsh*. 465, S. C.; 2 *Hawk*. c. 29, s. 3.)

Punishment of principals in second degree.

Punishment of Principals in the Second Degree.—Principals in the second degree are liable to the same punishment as the actual perpetrators of the crime, and this not only in offences at common law, but in cases of felony created by statute, to which the same implication extends. (1 Ch. C. L. 257; 1 *Leach*, 64; *Rex v. Royce*, 4 Burr. 2076.)

Though when the act is *necessarily* personal there are exceptions; (see 1 *Ch. C. L.* 252;) and some particular statutes impose on the actual perpetrators a different punishment.

2. Of Accessories in General.

II. Of Accessories in General.

An accessory (*quasi accedens ad culpam*) is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed. (4 *Steph. Com.* 113, 4th ed.)

Who are accessories.

In high treason there are no accessories, either before or after the fact; for all consenters, aiders, abettors, and knowing receivers and comforters of traitors, are principals. (1 *Hale*, 613.) Every instance of incitement, aid, or protection, which in the case of felony will render a man an accessory before or after the fact, in the case of high treason, whether it be treason at the common law or by statute, will make him a principal in treason, unless the case be otherwise provided for by the statute creating the offence, or where the special penning of the Act readeth to a different construction; but nothing short of such an Act will. (*Fost.* 341, 342.)

No accessories in treason.

But yet, as to the course of proceeding, it hath been the course that those who did actually commit the very fact of treason should be first tried, before those that are principals in the second degree, because, otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which has been considered absurd. (1 *Hale*, 437—613; 2 *Hale*, 223, 9—676.)

In misdemeanours at common law, persons, who in felony would have been accessories before the fact, were treated as principals. (*R. v. Greenwood*, 2 *Den. C. C.* 453, overruling *R. v. Else, Russ. & Ry.* 142; and *R. v. Page and Jones, M. S. Hereford*, 8 *p. Ass.* 1841.)

Nor in misdemeanours.

And now by statute 24 & 25 *Vict. c.* 94, s. 8, as to abettors in misdemeanours, "Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanour, whether the same be a misdemeanour at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished, as a principal offender." See also as to misdemeanours against the Larceny Act, 24 & 25 *Vict. c.* 96, s. 98. and as to any misdemeanour under the Act relating to malicious injuries to property, 24 & 25 *Vict. c.* 97, s. 56, and as misdemeanours against the Act relating to forgery, 24 & 25 *Vict. c.* 98, s. 49, and any misdemeanour against the Act relating to offences against the person, 24 & 25 *Vict. c.* 100, s. 67.

But accessories after the fact, in misdemeanours by receiving the offenders, are not in law under any penalties as accessories, unless the Acts of Parliament that inflict those penalties do expressly extend to receivers or comforters. (1 *Hale*, 613.) If, indeed, in misdemeanours, the act of the receiver amount to a rescue, or to the obstructing an officer of justice in the execution of his duty or the like, he would undoubtedly be indictable for it, as for a misdemeanour. (2 *Hawk. c.* 29, s. 4.)

When an offence is felony, either by the common law or by statute, all accessories, both before and after, are incidentally included. (3 *Inst.* 59.) But, as to felonies by Act of Parliament, *Lord Hale* distinguishes thereupon as follows: "Regularly," he says, "if an Act of Parliament enacts an offence to be felony, though it mention nothing of accessories before or after, yet, virtually and consequently, those that counsel or command the offence are accessories before, and those that knowingly receive the offender are accessories after. (1 *Hale*, 613.) But, if the Act of Parliament that makes the felony in express terms, comprehend

In felonies.
At common law.

By statute.

2. Of Accessories in General.

accessaries before, and make no mention of accessaries after, namely, receivers or comforters, there, it seems, can be no accessaries after; for the expression of procurers, counsellors, abettors, all which import accessaries before, makes it evident that the law-makers did not intend to include accessaries after, which is an offence of a lower degree than accessaries before." (1 *Hale*, 614.) Yet, says Mr. Hawkins, I take it to be settled at this day, that in these and all other cases where a statute makes any offence treason or felony, it involves the receiver of the offender in the same guilt with himself, in the same manner as in treason or felony at common law, unless there be an express provision to the contrary. (2 *Hawk.* c. 29, s. 14.)

And, although it is generally true that an Act of Parliament creating a felony renders, consequentially, accessaries before and after within the same penalty, yet the special penning of the Act sometimes varies the case. (1 *Hale*, 614.) Thus, the statute of 27 *Eliz.* c. 2, made the coming in of a Jesuit treason, the receiving or relieving of him felony, the contributing of money to his relief a *præmunire*; so that Acts of Parliament may diversify the offences of accessory or principal, according to the various penning thereof, and so have done in many cases. (1 *Hale*, 615.)

Accessory to an accessory.

There may be an accessory to a person who was accessory before the fact. As if A. advise and procure B. to murder C.; by this A. is accessory before the fact, and though but accessory, yet, if D. receives and conceals him from justice, D. hereby becomes an accessory; but it would seem there cannot be an accessory to a person who was accessory after the fact. (3 *P. Wms.* 475; 2 *Hawk.* c. 92, s. 1.)

III. Of Accessories before the Fact.

An accessory before the fact committed is he that, being absent at the time of the felony committed, doth yet procure, counsel, command, or abet another to commit a felony. (1 *Hale*, 615.) In misdemeanours and treason all who take part in the crime are principals. (*Fost.* 341, 342; *R. v. Greenwood*, 2 *Den. C. C.* 453; *R. v. Clayton*, 1 *C. & K.* 128; 24 & 25 *Vict.* c. 94, s. 8; *ante*, p. 23.)

ust be absent.

The accessory must be absent at the time of the felony being committed, for if he be present actually or constructively, he is a principal. (*Hale*, *sum.* 215.)

Procurement, &c.

Procure, counsel, command, or abet.—There need not be any direct communication between the accessory and the principal. (*Fost.* 125; *R. v. Cooper*, 5 *C. & P.* 535.) It is, therefore, enough if the accessory direct an intermediate agent to procure another to commit a felony; and it will be sufficient, even though the accessory does not name the person to be procured, but merely directs the agent to employ some person. (*R. v. Cooper*, *ubi sup.*)

The procurement may be by hire, counsel, command, or conspiracy, or by evincing an express liking, approbation, or assent to another's felonious design; (2 *Hawk.* c. 29, s. 16;) but a bare permission or tacit acquiescence is not enough; (1 *Hale*, 616;) and the bare concealment of a felony about to be committed is a misprision only, and will not make the party concealing an accessory before the fact. (2 *Hawk.* c. 29, s. 23.)

According to Lord Coke and Mr. J. Foster, the word command includes all those who incite, procure, set on, or stir up any other to do the fact. (2 *East*, *P. C.* 641.)

But the accessory is not liable if, in endeavouring to carry out the command, the principal commits a distinct offence from the one commanded, though he is for all the natural consequences arising out of the

perpetration of the act commanded, though perhaps not actually taken into consideration by him. Thus, if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessory to the robbery; (*Dalt. c. 161, p. 369*;) or if one command another to steal a horse and he steals an ox; or to rob a man in the highway of his money, and he robs him in his house of his plate; or to burn such a one's house, and he burneth the house of another; (*id.*;) but if the command be to beat one, and the party commanded beat him to death, the person commanding is accessory to the murder. (*Id.*; see 1 *Hale*, 442; 1 *East. P. C.* 257; see also *Foster*, 370, 371; *Russell on Crimes*. Vol. I., p. 63, 4th ed. by *Greaves*.)

So, if the command be to burn the house of A., and in so doing the house of B. is also burnt, the person commanding is accessory to the burning of B.'s house. (*R. v. Saunders*, *Plowd.* 475.) So also is the person commanding liable, though the command is carried out in another manner, or at another time, or place, than the one commanded. Thus, if the command is to kill by poison, and a dagger is used, or to kill in the highway, and the killing is in a house, or to kill one day, and the killing is done on another day. (*Dalt. c. 161*; *Fost.* 369, 370.)

It has been said generally that there can be no accessories before the fact to manslaughter; (1 *Hale*, 347, 450, 616;) and this is true if the manslaughter be *per infortunium* or *se defendendo*, but there are other cases in which there may be accessories to a manslaughter. Thus, a conviction upon an indictment for manslaughter was affirmed, where the prisoner's wife fancying herself pregnant, though not really so in the prisoner's absence, took sulphate of potash, which the prisoner had previously given to her for the purpose of procuring abortion, and thereby her death was caused. (*Gaylor's case*, 1 *D. & B.* 291.)

And the command must be continuing at the time of the offence committed. Thus, if a man command a person to kill another, and, before the command is carried out, he repents and countermands the order, and afterwards the man is killed, here the person countermanding is not accessory to the murder. (*Dalt. c. 161, ubi sup.*; and see *R. v. Dyson*, *R. & R.* 523.) And if a person advise a woman to kill her child as soon as it shall be born, and she kills it in pursuance of such advice, he is an accessory to the murder, though at the time of the advice, the child not being born, no murder could be committed of it, for the influence of the felonious advice continuing till the child was born makes the adviser as much a felon as if he had given his advice after the birth. (2 *Hawk. c. 29, s. 18*.) If the crime be not perpetrated, then the adviser may still be indicted for a misdemeanour in having made such solicitation. (*R. v. Higgins*, 2 *East*, 5; *R. v. Clayton*, 1 *C. & K.* 128.)

Before the 11 & 12 Vict. c. 43, accessories to offences punishable summarily could not be themselves punished summarily, unless the special Act creating the offence, and the jurisdiction expressly included accessories; but by section 5 of that Act "Every person who shall aid, abet, counsel, or procure the commission of any offence which is, or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment, as such principal offender is or shall be by law liable, and may be proceeded against, and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed." To bring a person within that section the offence must actually have been committed; but at common law the act of soliciting another to commit an indictable offence of whatever nature is indictable, though the offence itself was never committed. (*R. v. Higgins*, 2 *East*, 5.)

If the same act or conduct on the same occasion amounts to an aiding,

3. Of Accessories before the fact.

Manslaughter.

Offences punishable summarily under 11 & 12 Vict. c. 43.

Venue.

3. Of Accessories before the fact.

abetting, counselling, and procuring, it may be so alleged in the conviction or commitment; but if the conduct charged only constitutes one of such acts, it should be so stated. (*Ex parte Smith*, 27 L. J. M. C. 186.)

Though only one offence can be charged in the same information, (11 & 12 Vict. c. 43, s. 10,) an aider and abettor in the offence charged can be joined in the same information with the principal. (*Paley on Conv.* 5th ed. 75; see *Stacey v. Whitehurst*, 34 L. J. M. C. 94; *ante*, p. 19.)

The mere fact of the relationship of master and servant, where the servant obeys his master's orders, and is thereby guilty of a misdemeanour, is not sufficient as a matter of law either to make or to prevent the servant from being an aider and abettor; (*Wilson v. Stewart*, 32 L. J. M. C. 198; 3 B. & S. 913, S. C.); nor, on the other hand, would the same relation of itself prevent him from being an aider and abettor. (*Id.*: see also *Howells v. Wynne*, 32 L. J. M. C. 241; 15 C. B. N. S. 3, S. C.)

Under 24 & 25
Vict. c. 96.

By section 99 of 24 & 25 Vict. c. 96, whosoever shall aid, abet, counsel, or procure the commission of any offence which by that Act is made punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender is by this Act made liable.

By section 120 of the above Act, provisions of the 11 & 12 Vict. c. 43, are applied to summary proceedings thereunder as far as it can be consistently done.

Under 24 & 25
Vict. c. 97.

By section 63 of the 24 & 25 Vict. c. 97, s. 63, whosoever shall aid, abet, counsel, or procure the commission of any offence which is by that Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender is by that Act made liable.

By section 76 of that Act, the provisions of the 11 & 12 Vict. c. 43, are made applicable, so far as they are not inconsistent with anything in that Act contained.

Under the
25 & 26 Vict.
c. 94, for the
prevention of
poaching.

By the 2nd section of the 25 & 26 Vict. c. 94, any person aiding or abetting another, suspected with good cause by a constable of coming from any land where he shall have been unlawfully in pursuit of game, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets, or engines used for the killing or taking game, power to stop a cart, &c., and seize game is then given; and if any game, or gun, nets, &c., upon such person, cart, &c., it may be seized, and the constable may take out a summons before two justices under the 18 & 19 Vict. c. 126, s. 9; and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such articles, &c., for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding 5*l.*, and shall forfeit such game, guns, nets, &c. The 11 & 12 Vict. c. 43, is applied to this Act.

IV. Of Accessories after the Fact.

Accessories after.

An accessory after the fact is where a person knowing the felony to have been committed by another relieves, comforts, or assists the felon. (1 *Hale*, 618.)

This is a distinct offence from the receiving of goods stolen, knowing them to have been stolen, which is a statutory offence.

To make a person an accessory after the fact in felonies, there must be some particular evidence to raise the presumption that he knew that the principal had committed a felony. (1 *Hale*, 323 ; 3 *P. Wms.* 496.) There must be an act done by way of relieving, comforting, or assisting the felon. (*R. v. Chapple*, 9 *C. & P.* 355.) The mere possession of various sums of money derived from the disposal of the property stolen is rather an imperfect receiving of the stolen property than a comforting or assisting of the felons ; (*Id.* ;) but generally any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessory to the felony. (*R. v. Lee*, 6 *C. & P.* 536 ; and see *Reg. v. Hansill*, 3 *Cox*, *C. C.* 597.) Thus, to give him a horse to ride away with, or money or victuals to support him in his escape ; (2 *Hawk.* c. 29, s. 26 ; *Reg. v. Butterfield*, 1 *Cox*, *C. C.* 39 ;) or by giving money to a third person, that he may assist the felon by conveying him out of the country or otherwise. (*R. v. Jarvis*, 2 *Moo. & R.* 40.) So, if the felon come to a person's house before he be arrested, and knowing that he had committed the felony, such person shut the door of his house, whereby the pursuers are deceived, and the felon has an opportunity of escape. (1 *Hale*, 619.) So, whoever rescues a felon from arrest for the felony, or voluntarily suffers him to escape, is an accessory to the felony ; (2 *Hawk.* c. 29, s. 27 ;) and if a felon be in gaol for a man to convey instruments to him to break prison to make an escape, (see now as to this, 28 & 29 *Vict.* c. 126, s. 37,) or to bribe the gaoler to let him escape, makes the party an accessory ; (1 *Hale*, 621 ;) but whilst the knowingly assisting a felon with victuals to support him in his escape make a person an accessory ; yet if he be in prison, he that relieves him with necessary meat, drink, or clothes for the sustentation of life, is not accessory ; (1 *Hale*, 620 ;) or if he be bailed out, for he is *quodammodo* in custody, and is under a certainty of coming to his trial. (*Id.*) The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no accessory ; but it is a high contempt. (*Hale's Sum.* 219.) So, if a man know that a person hath committed a felony, but does not discover it, this does not make him an accessory, but is a misprision of felony for which he may be indicted, and upon his conviction fined and imprisoned. (1 *Hale*, 618.) So, if he see another commit a felony, but consents not, yet takes care to apprehend him, or to levy hue and cry after him, or upon hue and cry levied, does not pursue him, he is not thereby become an accessory, but is punishable by fine and imprisonment. (*Id.*) So, if the felon comes to a person's house before he be arrested, and such persons omit to arrest him, and suffer him to escape, knowing that he had committed a felony, that is a bare omission, and he is not, therefore, an accessory. (1 *Hale*, 619 ; and see *Reg. v. Hansill*, 3 *Cox*, *C. C.* 597 ; per *Erle*, J.)

There are no accessories after the fact to misdemeanours, (1 *Hale*, 613 ; *R. v. Greenwood*, 2 *Den.* *C. C.* 453,) because all are principals.

5. Proceedings against.

What is relieving, comforting, assisting.

What not acts of assisting, &c.

Misdemeanours.

V. Of the Proceedings against Accessories.

And herein—first, of Proceedings in General—secondly, of the Indictment—thirdly, of the Trial—fourthly, of the Evidence—fifthly, of the Punishment.

(1.) PROCEEDINGS IN GENERAL.

(5.) Proceedings against accessories.

(1.) In general

Conviction of

Formerly, accessories could not be prosecuted with effect until the

5. Proceedings against.

principal, when necessary.

Attainder of principal unnecessary.

Where the principal is erroneously attainted.

Where a person is charged as accessory to more than one.

Accessory may not be tried twice.

Accessory before the fact tried twice.

principal was convicted and attainted, and such conviction is still necessary before proceedings against accessories in general after the fact, unless they consent to such proceedings, see 1 *Hale*, 623; 2 *Hawk.* c. 29, s. 45; now, however, by the recent statute, 24 & 25 Vict. c. 94, s. 1, an accessory before the fact to a felony may be indicted, tried, convicted, and punished as if he were a principal felon.

By 24 & 25 Vict. c. 94, s. 5, it is enacted, that if any principal offender shall be in any wise convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall, upon conviction, suffer the same punishment as he would have suffered if the principal had been attainted.

If the principal be erroneously attaint, yet the accessory shall be put to answer, and shall not take advantage of the error in that attainder; but the principal reversing the attainder reverseth the attainder of the accessory. (1 *Hale*, 625.) Where an indictment for receiving stolen goods averred that the principal felon had been *duly convicted*, upon an objection that the record which was produced was not sufficiently formal and correct to support the averment, it was held that the *judgment* was not necessary, and might be rejected; that the *conviction* was sufficient; that in the common case where the receiver is tried with the thief, there is no judgment on the thief before the verdict against the receiver; and that although the record produced was full of errors, yet an erroneous attainder of the principal is sufficient, as against the accessory, until it is reversed. (*Baldwin's case*, Monmouth Summer Assizes, 1812, *cor. Thompson, B.*, 3 *Campb.* 265. (a)) And it should seem the reversal will not now be of any avail to the accessory if he be not indicted as an accessory, but for a substantive felony according to the foregoing recent enactments.

Formerly, if a man had been indicted as accessory in the same felony to several persons, he could not have been arraigned till all the principals were convicted and attainted; but now, if a man be indicted as accessory to two or more, and the jury find him accessory to one, it is a good verdict, and judgment may pass upon him. (*Lord Sanchar's case*, 9 *Rep.* 119; *Fost.* 361.)

And therefore the Court in their discretion may arraign him as accessory to such of the principals who are convicted; and if he be found guilty as accessory to them or *any* of them, judgment shall pass upon him; but on the other hand, if he be acquitted, that acquittal will not discharge him as accessory to the others.

By 24 & 25 Vict. c. 94, s. 7, it is provided, that no person who shall be once duly tried either as an accessory before or after the fact, or for a substantive felony under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

Since the 24 & 25 Vict. c. 94, s. 1, which re-enacts the 11 & 12 Vict. c. 46, s. 1, if a person be indicted as principal and acquitted, he shall not be indicted again as accessory before, and if he be, he may plead his former acquittal in bar, for that enactment destroys the force of Mr. Justice *Foster's* reasoning, (*Fost.* 362,) and the distinction taken in *R. v. Winifred Gordon*, 1 *East. P. C.* 352; (see *R. v. Hughes, Bell, C. C.* 242; 29 *L. J. M. C.* 71;) but if a man be indicted as accessory before the fact, he cannot be convicted on evidence proving him to be a principal of

(a) The judgment upon an indictment must be taken to be good until it is reversed by a writ of error; as in the case of proceedings against the accessory. So if there be a judgment

against the husband for treason, not reversed by error, it is sufficient to deprive the wife of her dower. (*Per Lawrence, J.*, *Holmes v. Walsh*, 7 *T. R.* 465.)

the first or second degree, (*R. v. Winifred Gordon*, 1 *East's P. C.* 352; *Post*. 362; *R. v. Perkins*, 2 *Den. C. C.* 459; *R. v. Owen*, 1 *Moo. C. C.* 96,) and may, therefore, be again indicted as a principal.

If a man be indicted as principal, and acquitted, he may be indicted as accessory *after*, for they are offences of several natures. (1 *Hale*, 626.)

And so it is if he be indicted as accessory *before*, and acquitted; yet, for the same reason he may be indicted as accessory *after*. (*Id.*)

No particular observations seem necessary as to the proceedings themselves against accessaries, except perhaps as regards—the indictment; the evidence; the trial; and the punishment of them; each of which proceedings we shall consider accordingly.

(2.) INDICTMENT AGAINST ACCESSARIES. (a)

By the 1st section of the 24 & 25 Vict. c. 94, as to accessaries before the fact, it is enacted, that whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, may be indicted, tried, convicted, and punished, in all respects as if he were a *principal felon*; and by s. 2, whosoever shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony if convicted as an accessory may be punished: the identical words of the 11 & 12 Vict. c. 46, and upon that Act it has been held, on a count for larceny, the prisoner may be convicted if the evidence proves that he was an accessory before the fact; (*Bell C. C.* 242; *R. v. Hughes*, 29 *L. J. M. C.* 71;) for the effect of the 1st section of the statute is to make accessaries before the fact principals in the felony.

Accessaries
before the fact by
statute.

The 24 & 25 Vict. c. 94, s. 1, is framed upon the 11 & 12 Vict. c. 46, s. 1, which latter statute has been held to apply in a case of murder. (*Reg. v. Chadwick*, 1 *Russ. on Crimes*, 68, 4th ed. by *Greaves*.)

Where the indictment contained a count charging A. and B. as principals in a larceny, and another count charged B. as a receiver of stolen goods, and a verdict of acquittal of A. was taken, and he was admitted as a witness, upon his evidence it appeared that he was the actual thief, and that B. was accessory before the fact, and received the goods afterwards, after a general verdict of guilty against B. it was held that there was no inconsistency in such verdict, for under the 11 & 12 Vict. c. 46, s. 1 (now replaced by 24 & 25 Vict. c. 94, s. 1), an accessory before the fact could be convicted under the first count, and there was no inconsistency in his also being a receiver afterwards. (*Reg. v. Hughes*, *ubi sup.*)

There is no objection in point of law that an indictment charges prisoners in one count as principals and in another as receivers. (*R. v. Galloway*, *Moo. C. C.* 235.)

In *Reg. v. Wallace*, 2 *Moo. C. C.* 200, a prisoner indicted as an accessory in the usual form to a felony committed by his principal, naming him, was held to have been rightly convicted under 7 Geo. IV. c. 64, s. 9, although the principal had not been convicted. (*Reg. v. Hansill*,

(a) As to the framing of indictments in general, see *post*, "Indictment," Vol. III.

5. *Proceedings against.*

Abettors in misdemeanours.

Aiders and abettors in summary offences.

3 *Cox C. C.* 597; *R. v. Caspar*, 9 *C. & P.* 289.) And to the same effect, see *Reg. v. Ashmall*, 9 *C. & P.* 236.

By 24 & 25 Vict. c. 94, s. 8, whoever shall aid, abet, counsel, or procure the commission of any misdemeanour, whether the same be a misdemeanour at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

Aiders and abettors in offences punishable on summary conviction are to be proceeded against and convicted for the same, either together with the principal offender or before or after his conviction. (11 & 12 Vict. c. 43, s. 5.)

As to Accessories after the fact.—By 24 & 25 Vict. c. 94, s. 3, whosoever shall become an accessory after the fact to any felony at common law or by virtue of any Act passed or to be passed, may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony if convicted as an accessory may be punished. (24 & 25 Vict. c. 94, s. 3.) The indictment of an accessory after the fact alone must charge the substantive offence of being an accessory after the fact, and if it charge the prisoner as a principal, a conviction upon it will be quashed. (*R. v. Fallon*, *L. & C.* 217; 32 *L. J. M. C.* 66.) If a man be indicted as an accessory to two, and he is found accessory to one, the verdict is good. (*Lord Sanchar's case*, 9 *Co. Rep.* 119; *Fost.* 361.) If a man be indicted as principal or as accessory before, and acquitted, he may again be indicted as accessory after, for they are offences of several natures. (*R. v. Fallon*, 1 *L. & C.* 217; 32 *L. J. M. C.* 66; 1 *Hale*, 626.)

Where triable twice.

Where a man is indicted as accessory after the fact, together with his principal, the original felony is to be stated in the same way as upon an indictment against an accessory before the fact with his principal; (see above, p. 28;) and the conclusion must aver that the accessory did receive, harbour, and maintain, &c., the principal felon, well knowing that he had committed the felony. (See form, *post*, p. 41.) The averment of knowledge is indispensably requisite, because without it the guilt does not manifestly appear (1 *Hale*, 622; *Com. Dig. Justices*, 62; 2 *Hawk.* c. 29, s. 33; c. 25, s. 67; *R. v. Thompson*, 2 *Lev.* 208.)

With respect to the *venue* in the indictment, see *post*, 34.

Venue.
Choice of remedies.

The prosecutor has now the option, in prosecuting an accessory *before the fact*, to indict him either as a principal or as an accessory in an indictment against him with the principal, or to indict him alone as an accessory after the conviction of the principal, or to indict him alone for a substantive felony. In the choice of these remedies it would be best to adopt the first, as the prosecutor would only have to prove the guilt and not to procure the conviction of the principal, as he would under the second.

In prosecuting an accessory *after the fact*, unless in the cases provided for by the 24 & 25 Vict. c. 94, s. 3, (*supra*), he must be indicted as such accessory either with the principal, or without him if the principal has been convicted; (1 *Hale*, 623;) the former course being the most usual and best.

A prisoner may be charged in one count of the indictment as an accessory before the fact, and in another count as an accessory after the fact to the same felony, and the prosecutor cannot be put to his election upon which charge he will proceed. (*Reg. v. Blackson*, 8 *C. & P.* 43.)

But there is no option to treat a man as receiver or as principal felon; thus, where a man is indicted as receiver of stolen goods, and the evidence proves him to have been the principal in the larceny, he is

entitled to be acquitted on the charge of receiving. (*Reg. v. Perkins*, 2 Den. 459; 21 L. J. M. C. 152 S. C.)

And so if a prisoner be indicted in the first count for stealing goods, and in the second count for receiving the said goods knowing the same to have been stolen as aforesaid, and be acquitted on the first count, he may be convicted on the second. (*Reg. v. Huntley*, 29 L. J. M. C. 70; *Bell C. C.* 238.)

When the principal does not appear to take his trial, but the accessory does, the latter is not compellable to plead to an indictment which charges him as accessory together with the principal. (*Reg. v. Ashmall*, 9 C. & P. 236.)

Indictment against Accessory together with his Principal.—Where the parties are thus joined in the same proceeding, the proper course is first to state the guilt of the principal according to the facts as if he alone had been concerned, and then in case of accessories before the fact to aver “that C. D., late of, &c. (the procurer) before the committing of the said felony and murder, (or burglary, as the case is,) in form aforesaid, to wit, on, &c. with force and arms, &c. did maliciously and feloniously incite, move, procure, aid, and abet, (or counsel, hire, and command, following the words of the statute if the defendant be made an accessory thereby, or else the effect of such words, (see *Rex v. Grevil*, 1 And. 195,) the said A. B. (the principal felon) to do and commit the said felony and murder, and in manner aforesaid against the peace,” &c. See form, *post*, p. 40.

Against principal
and accessory
jointly.

And where a man is indicted as accessory after the fact together with his principal, the original felony is to be stated in the same way, and the conclusion must aver that the accessory did receive, harbour, and maintain, &c. the principal felon, well knowing that he had committed the felony; see form, *post*, p. 41. The averment of knowledge is indispensably requisite, because without it the guilt does not manifestly appear. (1 *Hale*, 622; *Com. Dig. Justices*, t. 2; 2 *Hawk.* c. 29, ss. 32, 33; c. 25, s. 67; *R. v. Thompson*, 2 *Lev.* 208.)

A person may be indicted for receiving stolen property, if it remain the same in substance, though the name be changed: and, therefore, a principal may be indicted for the stealing of a live sheep, and the accessory with receiving twenty pounds of mutton. (*Rex v. Cowell and Green*, 2 *East's P. C.* 781; *R. v. Puckering*, 1 *Moo. C. C.* 242.)

Indictment.

In an indictment against the receiver of stolen property, the property stated to have been received should agree with that averred to be stolen; but in *R. v. Sadi, Leach*, 468, where the indictment charged the principal with stealing two bank notes, the property of S. S., and charged the accessory with receiving the said notes, the property and chattels of the said S. S., it was holden that the word “chattels” might be rejected as surplusage. Where the prisoner was indicted for stealing and for receiving the property aforesaid, knowing the same to have been stolen as aforesaid, and was acquitted on the first count, the Court rejected the words “as aforesaid” in the second count, and upheld a conviction on that count. (*Reg. v. Huntley*, 29 L. J. M. C. 70; *Bell C. C.* 238 S. C.)

It is not necessary to use the word “accessory” in the indictment, (*Rex v. Burrige, Plow.* 477,) or to set forth the means by which the accessory before the fact incited the principal to commit the felony, or the accessory after received, concealed, or comforted him; for it is perfectly immaterial in what way the purpose of the one was effected, or the harbouring of the other secured; and as the means are frequently of a complicated nature, it would lead to great inconvenience and perplexity if they were always to be described upon the record. (2 *Hawk.* c. 29, s. 17; *Co. Entr.* 56, 57; *Rast. Entr.* 48; 9 *Co.* 114.)

If two are charged jointly with receiving stolen goods, a joint act of receiving must be proved; proof that one received in the absence of the other and afterwards delivered to him, will not suffice. Successive

5. *Proceedings against receivers* are all separate receivers, and all punishable. (*R. v. Messing-ham*, 1 Moo. C. C. 257. But see *R. v. Barber*, 1 C. & K. 442.)

Against accessory alone after conviction of principal.

Indictment against the Accessary alone after the Conviction of the Principal.—It is not necessary in this case to aver, that the latter committed the felony, or on the trial to enter into a detail of the evidence adduced against him; but it is sufficient to recite with certainty the record of the conviction, because the Court will *prima facie* presume every thing on the former occasion to have been rightly and properly transacted. (*Fost.* 365; *Holmes v. Walsh*, 7 T. R. 465; *R. v. Hyman*, 2 Leach, 725.)

Against accessory alone for a substantive felony or misdemeanour.

Indictment against Accessary alone for a substantive Felony or Misdemeanour.—In this case it is not, it seems, necessary to allege the original felony or misdemeanour with that particularity as to time and place as in an indictment against the defendant together with the principal. (See 1 *Stark. C. L.* 168; *R. v. Scott*, 2 *East's P. C.* 781.) An indictment is properly framed which states that the principal felon cast away and destroyed a vessel, and that the accessory incited, moved, aided, counselled, hired, and commanded him to do it; and the accessory may be convicted on an indictment so framed, although the principal felon has not been tried, and does not appear to be amenable to justice. (*Reg. v. Wallace*, 1 C. & M. 200.) In other respects the indictment will assimilate that against principal and accessory jointly. (See form, *post*, 41.)

If the principal felon be *unknown*, the indictment may state the offence to have been committed by "some person or persons to the jurors aforesaid unknown." Thus in the case of *John Thomas*, the indictment was for receiving goods stolen by persons unknown, which was objected to be insufficient, in not ascertaining the principal thief, and that it ought to appear to whom in particular the prisoner was accessory. This objection being referred to the judges, they were unanimously of opinion that the indictment was good; that the great view of the statutes was to reach the receivers where the principal thieves could not easily be discovered. (*R. v. Thomas*, 2 *East's P. C.* 781; see *R. v. Messingham*, *ubi sup.*) Where, in an indictment against an accessory to a felony, it was stated, that the felony was committed "by a person to the jurors unknown;" and it was said that the principal felon was a witness before the grand jury, it was held, that the indictment could not be supported. (*R. v. Walker*, 3 *Camp.* 264.)

Where the principal is *known*, it seems proper to state it according to the truth: and the common form of the indictment is to state the fact of stealing the goods by the principal, and the receipt of them by the receiver, he then and there well knowing the said goods and chattels to have been feloniously stolen, &c. (*R. v. Hyman*, 2 *Leach*, 925.) Or, an allegation that the goods were stolen "by a certain evil disposed person," is good, without stating the name of the principal felon, or averring that he is unknown. (*R. v. Jarvis*, 6 C. & P. 156; *R. v. Caspar*, 9 C. & P. 289.) And this in many cases may be the best mode of stating the offence.

If a charge against an accessory be that the principal felony was committed by persons *unknown*, it is no objection that the same grand jury have found a bill imputing the principal felony to J. S. Thus, in *R. v. J. Bush*, the prisoner was tried before Mr. Baron Garrow, at the Gloucester Summer Assizes, 1818, and was convicted, and received sentence of transportation for fourteen years, but execution was stayed in order that the opinion of the judges might be taken upon the propriety of the conviction. The indictment stated, that "a certain person or persons to the jurors unknown," the dwelling-house of *Hannah Wilmot* burglariously did break and enter, and certain silver plate, commonly called a silver cream jug, her goods, did steal, and that *Bush* feloniously did receive and have the same, he then and there well

knowing the same to have been feloniously and burglariously stolen, &c. Upon the trial it appeared, that among the records of indictments returned by the same grand jury, there was one charging one *Henry Moreton* as principal in the burglary, and the prisoner *Bush* as accessory after, in receiving the cream jug. *Mrs. Wilmot* proved that her house had been broken but once, that she had lost only one cream jug, and that she had preferred two indictments to the grand jury. The counsel for the prosecution had declined to proceed on the indictment against *Moreton*. *Ludlow*, for the prisoner, objected that the allegation in the present indictment, that the person or persons who committed the burglary were unknown to the jurors, is negatived by the other record, and that the prisoner was entitled to be acquitted. This point was reserved for the opinion of the judges, who, in *Michaelmas Term, 1818*, held the conviction right, being of opinion that the finding by the grand jury of the bill imputing the principal felony to J. S. was no objection to the second indictment, although it stated the principal felony to have been committed by certain persons to the jurors aforesaid *unknown*. (*R. v. Bush, R. & R. C. C. 372.*)

In one case it was made a question, but not decided, whether upon a charge of receiving from T. S., the receipt from T. S. must be proved, the statute making it criminal without regard to the person from whom the stolen property is received, (*R. v. Messingham, 1 Moo. C. C. 257.*) but it would seem not.

By 24 & 25 Vict. c. 94, s. 6, any number of accessories at different times to any felony, and any number of receivers at different times of property stolen at one time, may be charged with substantive felonies in the same indictment, and may be tried together notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice. This section is framed on the 14 & 15 Vict. c. 100, s. 15. They should separately be charged in separate counts, but where an indictment charged four prisoners with feloniously inciting a person to forge a will, and the evidence showed only separate acts at different times, and one of the prisoners pleaded guilty, it was urged that all the other prisoners were entitled to their acquittal on the joint charge, but the objection was overruled. (*R. v. Barber, 1 C. & K. 442.*)

5. *Proceedings against.*

Several accessories may be included in the same indictment.

(3.) TRIAL OF ACCESSARIES.

Time of Trial, &c.—Where the accessory is indicted as such, *together with his principal*, which is in general the best and most usual way, it seemeth the accessory may be put to answer before the principal hath appeared; but his plea cannot be tried before such appearance, unless he desire it himself; but if he will put himself upon the trial before the principal be tried he may, and his acquittal or conviction upon such trial is good. (*Reg. v. Ashmall, 9 C. & P. 236; 2 Hawk. c. 29, s. 45; 1 Hale, 623.*) But it seems necessary in such case to respite judgment till the principal be convicted and attain, for if the principal be after acquitted, that conviction of the accessory is annulled, and no judgment ought to be given against him; but if he be acquitted of the accessory, that acquittal is good, and he shall be discharged. (*1 Hale, 623, 624.*)

If the principal and accessory appear together, and the principal plead the general issue, the accessory shall be put to plead also; and that if he likewise plead the general issue, both may be tried by one inquest; but that the principal must be first convicted, and that the jury shall be charged that if they find the principal not guilty, they shall find the accessory not guilty. But it seems agreed, that if the principal plead a plea in bar or abatement, or a former acquittal, the accessory shall not be forced to answer till that plea is determined;

(3.) Time of trial where accessory indicted as such with principal.

Trial of.

5. *Proceedings against.*

for if it be found for the principal, the accessory is discharged; if against the principal, he shall after plead over to the felony, and shall be acquitted. (2 *Hawk.* c. 29, s. 47; 1 *Hale*, 624.) Upon an indictment against an accessory, together with the principal, if the principal do not appear, the accessory is not compellable to plead. (*Reg. v. Ashmall*, 9 C. & P. 236.)

Even in a case where the principal was indicted for burglary and larceny in a dwelling-house, and the accessory charged in the same indictment as accessory before the fact to the said "felony and burglary," and the jury acquitted the principal of the burglary, but found him guilty of the larceny: it seems the judges were of opinion that the accessory should have been acquitted; for the indictment charged him as accessory to the burglary only, and the principal being acquitted of that, the accessory should be acquitted also. (*R. v. Dannelly and Vaughan*, 1 R. & R. C. C. 310.)

Formerly, if a man had been indicted as accessory in the same felony to several persons, he could not have been arraigned till all the principals were convicted and attainted; but as the law now stands, if a man be indicted as accessory to two or more, and the jury find him accessory to one, it is a good verdict, and judgment may pass upon him. (*Lord Sanchar's case*, 9 Rep. 119; *Fost.* 361; 1 *Hale*, 624.)

And therefore the Court in their discretion may arraign him as accessory to such of the principals who are convicted; and if he be found guilty as accessory to them or any of them, judgment shall pass upon him: but on the other hand, if he be acquitted, that acquittal would not discharge him as accessory to the others; but by statute 24 & 25 Vict. c. 94, s. 7, it is provided, that no person shall be tried more than once for the same offence of being accessory, if once duly tried.

Where the defendant is *indicted by himself* for a substantive felony, as he may be under the 24 & 25 Vict. c. 94, the time of his trial need not be regarded as in the case of other accessories.

See further as to the trial of accessories before and after the fact, 24 & 25 Vict. c. 94, ss. 1, 2, 3, 5, 6, and 8, *ante*, pp. 24, 25. And by 24 & 25 Vict. c. 94, s. 6, *ante*, p. 33, any number of accessories at different times to any felony may be tried together.

Where accessory before the fact is indicted for a substantive felony.

Place of trial.

Place of Trial.—Formerly when the accessory became guilty in a county different from that in which the principal felony was committed, it was doubted, from the strict locality of offences at common law, whether he could be indicted in either; (2 *Hawk.* c. 29, s. 48;) but this doubt was removed by the statutes 2 & 3 Edw. VI. c. 24, ss. 2 and 3, and 43 Geo. III. c. 113, s. 5, since repealed by the 7 Geo. IV. c. 64, and 9 Geo. IV. c. 31.

Venue.

And now by 24 & 25 Vict. c. 94, s. 7, where any felony shall have been wholly committed within England or Ireland, the offence of any person who shall be an accessory either before or after the fact to any such felony may be dealt with, inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felony, or any felonies committed in any county or place in which the act, by reason whereof such person shall have become such accessory, shall have been committed; and in every other case the offence of any person who shall be an accessory either before or after the fact to any felony may be dealt with, inquired of, tried, determined and punished by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, (or began on the sea and completed on the land, or began on the land and completed on the sea,) and whether within Her Majesty's dominions or without; (or partly within Her Majesty's dominions and partly without;) provided that no person who shall be once duly tried either as an accessory

before or after the fact, or for a substantive felony under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

As to offences committed within the jurisdiction of the Admiralty. By 24 & 25 Vict. c. 94, s. 9. Where any person shall, within the jurisdiction of the Admiralty of England or Ireland, become an accessory to any felony, whether the same be a felony at common law, or by virtue of an Act passed or to be passed, and whether such felony shall be committed within that jurisdiction or elsewhere, or shall begin within that jurisdiction, and be completed elsewhere, or shall be begun elsewhere and completed within that jurisdiction, the offence of such person shall be felony; and in any indictment for any such offence, the venue in the margin shall be the same as if the offence had been committed in the county or place in which such person shall be indicted, and his offence shall be averred to have been committed "on the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

An accessory before the fact to a felony committed on the high seas within the jurisdiction of the Admiralty, might be indicted and tried at the Central Criminal Court by virtue of the 5 & 6 Will. IV. c. 36, s. 22, and the 7 Geo. IV. c. 64, s. 9, which last section is now repealed, but re-enacted by 24 & 25 Vict. c. 94, s. 7, although the principal had not been committed to or detained in the gaol of Newgate for his offence. (*Reg. v. Wallace*, 2 M. C. C. 200.)

Aiders and abettors in summary offences may be proceeded against, and convicted either in the county, riding, division, liberty, city, borough, or place, where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring, may have been committed. (11 & 12 Vict. c. 43, s. 5.)

As to the place of trial of accessaries in the Admiralty jurisdiction, see *post*, "*Admiralty*."

5. Proceedings against.

As to offences within Admiralty jurisdiction.

Place of trial in summary offences.

Admiralty jurisdiction.

(4.) EVIDENCE AGAINST ACCESSARIES IN GENERAL.

On Indictment against Principal and Accessary before the Fact.—The evidence in this case must consist of proof of the guilt of the principal, so as to obtain his conviction. (See *ante*, p. 17.) The accessory may enter into the full defence of the principal, and avail himself of every matter of fact and every point of law tending to the acquittal of the principal; for the accessory in this case is to be considered as *particeps in lite*, and this sort of defence necessarily and directly tendeth to his own acquittal. (*Fost.* 365, *infra*.)

The prosecutor must prove that the accessory had previous to the crime procured, hired, advised, or commanded the principal to commit it, and whether this were done directly, or through the intervention of a third person, is immaterial. (*Fost.* 125.) It must appear the accessory was *absent* when the crime was committed, so that he was not a principal, *ante*, p. 23; and see as to what is necessary to constitute a party an accessory before the fact, *ante*, p. 24.

(4.) Evidence.

Evidence.

On Indictment against an Accessary after the Fact, together with the Principal.—The prosecutor should prove the guilt of the principal, as *ante*, p. 17. As against an accessory it would seem that the confession of the principal by pleading guilty, or otherwise, is not admissible to prove the guilt of the principal of the principal offence. (*R. v. Turner*, 1 Moo. C. C. 347; *Ratcliffe's case*, *Lewin* 121; 1 *Russell on Crimes*, 76, 4th ed., by *Greaves*, and see tit. "*Evidence*," Vol. II.) But statements and acts done at the time by the principal, constituting part of the *res gestæ*, or showing the state of his mind where the *animus* of the party constitutes a material element of the offence, are admissible in evidence

Against accessory after the fact.

5. Proceedings against.

against the accessory. (*Reg. v. Hansill*, 3 Cox C. C. 597; *Reg. v. Pym*, 1 Cox, C. C. 339.) He must prove that the defendant received, harboured, or maintained him, as *ante*, p. 26; and knew he had committed a felony, as *ante*, p. 27. This knowledge may be proved either from the defendant's admissions, or the like, or by evidence of circumstances, from which the jury may fairly presume it. Buying stolen goods at an under value is a presumptive evidence that the buyer knew they were stolen. (1 Hale, 619.) If the prisoner, at different times, receive property stolen from the prosecutor, although the substantive charge must be confined to some one receiving, yet the other receivings may be given in evidence, to show a guilty knowledge that the goods were stolen; (*Rex v. Dunn*, 1 Moo. C. C. 146: and see *Rex v. Burridge*, 3 P. Wms. 439;) as subsequent utterings of counterfeit coins of different denominations are evidence to prove the guilty knowledge. (*Reg. v. Foster*, Dears C. C. 456; 24 L. J. M. C. 134; *R. v. Weeks*, L. & C. 18; 30 L. J. M. C. 141.) He must be proved to have done some act to assist the felon personally, or employed another person to do so. (*Reg. v. Chapple*, 9 C. & P. 355; *Reg. v. Jarvis*, 2 M. & Rob. 40: 1 Hale, 620.)

Against accessory after conviction of principal.

On Indictment against the Accessary after Conviction of Principal.—In this case the prosecutor should prove the conviction of the principal. Where the accessory is tried in the same county in which the principal was convicted, this is easily effected by the clerk of assize or clerk of the peace attending at the trial with the record. But if the accessory be tried in a different county, it is necessary to produce either the record itself, or at least an examined copy of it. (See *post*, "Evidence," Vol. II.) This is evidence against the accessory sufficient to put him upon his defence, for it is founded upon a legal presumption, that every thing in the former proceeding was rightly and properly transacted. (*Holmes v. Walsh*, 7 T. R. 465.)

But a presumption of this kind must, as it seems, give way to facts manifestly and clearly proved. (*Fost.* 365.) As against the accessory, therefore, the conviction of the principal will not be conclusive; it is as to him *res inter alios acta*: for an accessory may controvert the guilt of the principal, notwithstanding the record of his conviction. (*Smith's case*, O. B. Dec. 1783, 1 Leach, 289.) And, therefore, if it shall come out in evidence upon the trial of the accessory, as it sometimes has and frequently may, that the offence of which the principal was convicted did not amount to felony in him, or *not to that species of felony with which he was charged*, the accessory may avail himself of this, and ought to be acquitted. (*Fost.* 365: and see *Dannelly's case*, Russ & R. C. C. 310; *ante*, 24.)

And as in point of *law*, so also in point of *fact*, if it shall manifestly appear in the course of the accessory's trial that the principal was innocent, common justice seemeth to require that the accessory should be acquitted. As suppose a man is convicted upon circumstantial evidence, strong as that sort of evidence can be, of murder; another is afterwards indicted as accessory to this murder; and it cometh out upon the trial by incontestable evidence, that the person who was supposed to be murdered is still living: in this case certainly the person indicted as accessory shall be acquitted. Or suppose the person to have been in fact murdered, and that it should come out in evidence, to the satisfaction of the court and jury, that the witnesses against the principal were mistaken in his person (a case of this kind Sir Michael Foster says he has known), that the person convicted as principal was not nor could possibly have been present at the murder. (*Fost.* 367, 368; 1 Hawk. 454, n. (1).)

Whatever is evidence against the principal is *primâ facie* evidence of the principal felony, as against the accessory. If an indictment against a receiver state the principal felony to have been committed by A. B.,

whatever would have been evidence of the principal felony to convict A. B. is receivable to prove this allegation on the trial of the receiver, but is not conclusive. Therefore, if A. B. confessed the principal felony, that confession is admissible on the trial of the receiver to prove the commission of the principal felony. (*Rex v. Blick*, 4 C. & P. 377.)

After proof of the conviction then prove the defendant's guilt as accessory; see *ante*, p. 26, as to what will render him one.

On Indictment against the accessory alone for a substantive Felony.—In this case the prosecutor should prove the offence stated in the indictment, and that the same was committed by the principal as therein stated. As to proof of a commission of the offence by persons unknown, see *ante*, p. 32. The defendant's guilt as an accessory should be proved as in other cases, see *ante*, p. 26.

6. Forms.

For a substantive felony.

Competency of Witnesses.—The principal, though not convicted or pardoned, may be examined as a witness against the accessory or receiver.

Witnesses.

(5.) PUNISHMENT OF ACCESSARIES.

Accessaries before the Fact.—Accessaries before the fact are in general punishable in the same manner as principals, for they are frequently more deeply criminal than the principal. (See *Dalt. c. 161.*) And now by statute 24 & 25 Vict. c. 94, s. 1, whosoever shall become an accessory before the fact, to any felony at common law, or by virtue of any Act passed or to be passed, may be punished in all respects as if he were a principal felon; and by section 2, whosoever shall counsel, procure, or command any other person to commit any felony, shall be guilty of felony, and being tried as in that section described, shall, upon conviction, be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.

Aiders and abettors in summary offences are liable on conviction to the same forfeiture and punishment, as such principal offender is or shall be by law liable (11 & 12 Vict. c. 43, s. 5).

(5.) Punishment of accessaries.

As to accessory before the fact.

Punishment in summary offences.

Accessaries after the Fact.—The punishment of accessaries after the fact is at common law trivial, they being in most cases allowed the benefit of clergy. (See *Fost. 372*; *P. Wms. 475.*) By statute 24 & 25 Vict. c. 94, s. 3, whosoever shall become an accessory after the fact to any felony, and be indicted and tried as in that section mentioned, may, upon conviction, be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

By 24 & 25 Vict. c. 94, s. 4, every accessory after the fact to any felony, except where it is otherwise specially enacted, whether the same be a felony at common law or by virtue of any Act passed or to be passed, shall be liable at the discretion of the Court to be imprisoned in the common gaol or house of correction, for any term not exceeding two years, with or without hard labour, and it shall be lawful for the Court, if it shall think fit, to require the offender to enter into his own recognizances, and to find sureties both or either for keeping the peace in addition to such punishment, provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

Accessaries after the fact.

As to accessaries after the fact.

Punishment.

VI. Forms.

— } The information and complaint of C. D. of , (yeoman,) taken
to wit. } this day of , in the year of our Lord, 18
before the undersigned, one of her Majesty's justices of the peace, in and for the

(1.) Information to ground a warrant to apprehend a principal in the second degree.

6. Forms.

said county of _____, who saith that on, &c. [Principals in the second degree may be described like principals in the first degree, as having actually committed the offence; or, in felony, where the principals in the first and second degrees are committed at the same time, after stating the offence of the principal in the first degree, the offence of the principal in the second degree may be described thus]:—*And that the said C. D. [the principal in second degree] feloniously was then and there present, aiding, abetting, and assisting the said C. F. to do and commit the said felony.*

Sworn before me, the day and year above-mentioned, at
J. P.

(2.) The like
against an
accessory before
the fact.

— } *The information and complaint of A. B. of the parish of*
to wit. } in the said county, gentleman, taken this _____ day of _____, in the
year of our Lord _____, before the undersigned J. P. Esq. one of her Majesty's
justices of the peace in and for the said county of _____; who saith that [the
offence should be described according to the fact: in burglary it may be thus]
on _____ the _____ day of _____ last, his dwelling-house, situate in
the parish of _____ in the said county, was, about the hour of _____ in the
night of the same day, broken and entered by some person or persons [or as the
case may be,] and that [describe the property stolen] the property of him the
said A. B. [or "of C. D." as the case may be] was [or "were"] then and there
feloniously stolen, and that he hath just cause to suspect and doth suspect that
E. F. late of _____ aforesaid, (labourer,) did commit the said felony [or as
the case may be,] and that G. H. late of _____ aforesaid, (labourer,) did
counsel, hire, procure, or command the said E. F. to commit the said felony [or as
the case may be.]

Sworn before me, the day and year first above-mentioned, at
J. P.

(3.) The like
against accessory
after the fact.

[If an accessory after the fact, then the form may be thus, after the usual commencement and stating the offence of the principal as in form (No. 2.) supra:]—*And also that the said A. B. hath cause to suspect and doth suspect that C. D. late of _____ in the county of _____, (yeoman,) well knowing the said E. F. [the principal] to have done and committed the felony as aforesaid, afterwards him the said E. F. did feloniously receive, aid, and comfort.*

Sworn before me, the day and year first above-mentioned, at
J. P.

(4.) Information
against an aider
and abettor of
an offence
punishable
summarily.

— } *The information [or "complaint,"] of A. B. of the parish of*
to wit. } in the said county of _____, (labourer,) taken [upon oath, if so
required,] before the undersigned one of her Majesty's justices of the peace, this
_____ day of _____, in the year of our Lord _____, who saith that
C. D. of the parish of _____ in the county of _____, (labourer,) on the
_____ day of _____ instant, at the parish of _____ in the said county of _____
, did [describe the offence of the principal and then add,] and that
E. F. of _____, unlawfully [or "wilfully," or as in statute] was then
and there present, and did aid and abet the said C. D. to do and commit the said
offence, contrary, &c.

(5.) Information
against an
accessory before
the fact to an
offence punish-
able on summary
conviction.

[Proceed as ante in No. 4, describing the offence of the principal, and then add.] *And that E. F. of _____, before the said offence was committed as aforesaid, to wit, on the _____ day of _____, aforesaid, at the parish of _____ aforesaid, unlawfully [or "wilfully," or as in the statute] did counsel and procure the said C. D. to do and commit the said offence, contrary, &c.*

(6.) Warrant to
apprehend an
accessory before
the fact.

— } *To the Constable of _____ and to all other Peace Officers in the said*
to wit. } County of _____
Whereas A. J. of _____, (labourer,) hath this day been charged upon oath,
before the undersigned, one of her Majesty's justices of the peace in and for the said
county of _____, for that he on, &c., at &c., did feloniously, &c. [state the
felony as usual] and C. D. late of _____ aforesaid, (labourer,) hath also been
charged upon oath that he the said C. D. did counsel, hire, procure, or command

the said A. J. [or "person or persons unknown"] to commit the said felony. These are therefore to command you in her Majesty's name, forthwith to apprehend and bring before me the said A. J. and C. D. to answer the said charge, and to be further dealt with according to law. Given under my hand and seal this day of _____, A.D. one thousand eight hundred and _____ at _____ in the county aforesaid. J. P. (L. S.)

6. Forms.

— } To the Constable of, &c. [as in form (No. 4) *supra*.]
to wit.

Whereas E. F. of _____, (labourer,) stands charged before the undersigned, one of Her Majesty's justices of the peace in and for the said county of _____ on the oath of A. J., for that he [state the offence as in the information.] And whereas G. H. (labourer) hath also been charged upon oath before me, for that he since the said felony was committed, hath received, harboured, and maintained the said E. F. in the dwelling-house of the said C. D. at _____ aforesaid; he the said C. D. well knowing the said E. F. to have committed the said felony. These are therefore, &c. [as in preceding form.]

(7.) The like to apprehend accessory after the fact, for harbouring principal.

The form as to this in stating the offence may be collected from the form of an information against a principal in the second degree. The form of the commitment in other respects may be as in the following precedent.

(8.) Commitment of principal in second degree.

To the constable of _____, and to the keeper of the [house of correction] at _____, in the said [county] of _____

(9.) Commitment of accessory together with the principal.

Whereas A. B. was this day charged before me J. S. one of Her Majesty's justices, of the peace in and for the said (county) of _____, on the oath of C. D. of _____, (farmer,) and others for that [&c. stating the offence.] And G. H. was also this day charged before me on the oath of C. D. aforesaid, with having counselled, hired, procured, and commanded the said A. B. to commit the said felony and [as the case may be]. These are therefore to command you the said constable of _____, to take the said A. B. and C. D., and them safely to convey to the (house of correction) at _____ aforesaid, and then to deliver them to the keeper thereof together with this precept. And I do hereby command you the said keeper of the said (house of correction) to receive the said A. B. and C. D. into your custody in the said (house of correction), and there safely keep them until they shall be thence delivered by due course of law. Given under my hand and seal at this day of _____ in the year of our Lord _____ at _____ in the county aforesaid.

Commencement as usual, as *ante*, No. 9.] for that [describing the offence of the principal, as in commencement, No. 9.] and that the said C. D. before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel and command the said A. B. [or "person unknown"] to do and commit the said felony, [following the form of the warrant.] These are therefore, &c. [Conclude as usual, as *ante*, No. 9.]

(10.) The like, without the principal.

Commencement as usual, as *ante*, No. 9.] and after describing the offence of the principal, proceed thus:—And that the said C. D. well knowing the said A. B. to have committed the felony aforesaid, did afterwards feloniously receive, harbour, and maintain the said A. B. These are therefore, &c. [Conclude as usual, as *ante*, No. 9.]

(11.) The like,² accessory after the fact, with the principal.

Commencement as usual, as *ante*, No. 9.] for that [describing the offence of the principal] and that the said C. D. afterwards, well knowing the said A. B. to have committed the felony aforesaid, did feloniously receive, harbour, and maintain the said E. F. These are therefore, &c. [as usual, as *ante*, No. 9.]

(12.) The like, without the principal.

Commencement as usual, as *ante*, No. 9.] with being an accessory after the fact, that is to say, by harbouring, relieving, comforting, and assisting one A. B. after he the said A. B. had feloniously assaulted the said E. F. on the said Queen's highway, put him in fear and feloniously taken from his person [a silver watch and

(13.) The like, without the principal, in

6. Forms.

another form, in case of a highway robbery.

(14.) Conviction of abettor or procurer in an offence punishable by 24 & 25 Vict. c. 96, s. 99, on summary conviction.

seals] his property, he the said C. D. well knowing the said A. B. to have done and committed the said felony. These are therefore, &c. [Conclude as usual, as ante, p. 39.]

For aiding or abetting, the offender may be convicted in the same form as if he had actually committed the offence. For counselling or procuring another to commit the offence, the party may be convicted with the principal; stating that] *C. D. and E. F. are convicted before me J. P. one, &c. for that the said C. D. on, &c. at, &c., [stating the offence of the principal in the ordinary way, and then stating the offence of procurer, thus,] and for that the said E. F. before the said offence was so committed as aforesaid, to wit, on, &c. at, &c. aforesaid, did unlawfully counsel and procure the said C. D. the said offence in manner and form aforesaid to do and commit, against the form of the statute in that case made and provided; I the said J. P. do therefore adjudge, &c.*

(15.) Indictment against principal in second degree.

— (venue) *The jurors for our Lady the Queen, upon their oath present, that C. D. late of the parish of in the county of, (labourer,) on the day of in the year of our Lord [stating the offence of the principal in the first degree, as in other indictments, omitting the conclusion, and immediately before the conclusion of the indictment proceed thus:] And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of the parish of in the county aforesaid, (labourer,) on the day of in the year of our Lord, at the parish aforesaid, in the county aforesaid, feloniously was present, aiding, abetting, and assisting the said C. D. the felony and burglary [recording to the fact] aforesaid to do and commit, against the peace, &c. [In an indictment for murder, this is inserted immediately before the concluding clause, and so the jurors, &c.; and this clause then charges both the principals in the first and second degree with the murder, thus:] And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. and E. F. the said A. B. in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our Lady the Queen, her crown and dignity.*

(16.) Indictment against accessory before the fact, together with principal in murder, burglary, or felony.

— (venue) *The jurors, &c. [after framing the indictment against the principal in the usual form until the usual conclusion, omitting such conclusion, proceed thus:] And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of the parish of in the county of, (labourer,) before the said felony [or “felony and murder,” or “burglary,” or “larceny,” as the case may be,] was committed in form aforesaid, to wit, on the day of in the year of our Lord, at the parish aforesaid, in the county aforesaid, did feloniously and maliciously aid, abet, and procure [or if for murder, “did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command”] the said C. D. the said felony [or “felony and murder,” or “burglary,” or “larceny,” as the case may be,] in manner and form aforesaid, to do and commit, against the peace, &c. [and if against a statute, add, “and against the form of the statute in such case made and provided.”]*

(17.) Indictment against accessory before the fact, the principal being convicted.

— (venue) *The jurors for our Lady the Queen, upon their oath present, that heretofore, to wit, at the general sessions of the delivery of the gaol of, &c. &c. [so continuing the caption of the indictment against the principal,] it was presented that one A. B. late of the parish of in the county of, (labourer,) on the day of in the year of our Lord [continuing the indictment to the end, reciting it, however, in the past tense,] upon which said indictment the said A. B. at the session of the gaol delivery aforesaid, was duly convicted of the felony and burglary [according to the fact] aforesaid; as by the record thereof more fully and at large appears.* And the jurors aforesaid, upon their oath aforesaid, do further present, that C. D. late of the parish aforesaid, in the county aforesaid, (labourer,) before the said felony and burglary [according to the fact] was committed in form aforesaid, to wit, on, &c. at the parish aforesaid, in the county aforesaid, did feloniously and maliciously incite, move, procure, and counsel, hire, and command the said A. B. the said felony and burglary [according to the fact] in manner and form aforesaid to do and commit, against the peace of our Lady the Queen, her crown and dignity.*

— (venue) *The jurors for our Lady the Queen, upon their oath present, that one C. D. late of the parish of _____ in the county of _____, (labourer,) [or "that some person or persons to the jurors aforesaid unknown," ante, 32.] on the _____ day of _____ in the year of our Lord _____, [stating a burglary, robbery, or larceny whatsoever, of the degree of grand larceny, or other felony, as usual, omitting the usual conclusion "against the peace," &c.] And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of the parish and county aforesaid, (labourer,) before the said felony and burglary [according to the fact] was committed in form aforesaid, to wit, on the _____ day of _____ in the year of our Lord _____, at the parish aforesaid, in the county aforesaid, did unlawfully and maliciously counsel, hire, procure, and command the said C. D. [or "the said person or persons to the jurors aforesaid unknown, as aforesaid,] the said felony and burglary [according to the fact,] in manner and form aforesaid to do and commit, [against the form of the statute in such case made and provided, and] against the peace of our Lady the Queen, her crown and dignity.*

Admiralty.

(18.) Indictment against accessory before the fact as for a substantive felony.

— (venue) *The jurors, &c. [after framing the indictment against the principal in the usual terms until the usual conclusion, omitting such conclusion, proceed thus.] And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of the parish of _____ in the county of _____, (labourer,) on the _____ day of _____ in the year of our Lord _____, well knowing the said C. D. to have done and committed the said felony and burglary [according to the fact] in form aforesaid, afterwards, to wit, on the _____ day and year aforesaid, at the parish aforesaid, in the county aforesaid, him the said C. D. did feloniously receive, harbour, and maintain, against the peace of our Lady the Queen, her crown and dignity.*

(19.) Indictment against accessory after the fact, with the principal.

As in the form (17), *supra*, against an accessory before the fact, the principal being convicted, to the*, and then thus:] *And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of the parish of _____ in the county of _____, (labourer,) on the _____ day of _____ in the year of our Lord _____, well knowing the said C. D. to have done and committed the said felony and burglary [according to the fact] aforesaid, after the same was so committed as aforesaid, to wit, on the _____ day and year aforesaid, at the parish aforesaid, in the county aforesaid, him the said C. D. did feloniously receive, harbour, and maintain, against the peace of our Lady the Queen, her crown and dignity.*

(20.) Indictment against accessory after the fact, the principal being convicted.

Admiralty. (a)

I. Jurisdiction of, 42.

[15 *Rich. II.* c. 3; 39 *Geo. III.* c. 37.]

I. Mode of Trial by, 43.

[28 *Hen. VIII.* c. 15; 7 & 8 *Vict.* c. 2; 4 & 5 *Will. IV.* c. 36.]

III. Expenses of Prosecutions, 49.

[7 *Geo. IV.* c. 64; 4 & 5 *Will. IV.* c. 36; 7 & 8 *Vict.* c. 2.]

IV. Punishments for Offences in Jurisdiction of, 50.

[7 & 8 *Geo. IV.* c. 28; 7 & 8 *Vict.* c. 2.]

(a) As to the Criminal Jurisdiction of this Court in general, see 2 *Hale*, 11 to 20; *Com. Dig. Admiralty*, E. I.; *Bac. Abr. Admiralty*, D.; 1 *Ch. C. L.* As to forging hand of registrar

in, see "Forgery," Vol. II. As to the evidence of the proceedings of the Admiralty Court, see *post*, "Evidence," Vol. II.

1. *Its Jurisdiction.* V. *Summary powers of Justices*, 50.
 [11 & 12 Vict. c. 42.]
 VI. *Offences relating to the Admiralty*, 51.
 [28 & 29 Vict. c. 124.]
 VII. *Forms*, 52.

I. Its Jurisdiction.

(1.) Jurisdiction
 of.
 At common law.

JURISDICTION of, at *Common Law*.]—The jurisdiction of the Admiralty Court is at common law confined to offences and other matters committed on the main sea or coasts of the sea not being in any county, cinque port, haven, or pier. (See 5 *Rep.* 107; 4 *Inst.* 134.) Therefore, if a murder be upon the main sea, it might be tried before the admiral. (1 *Hale*, P. C. 500.)

It is plain that the admiral could have no jurisdiction in any rivers, or arms or creeks of the sea, within the bodies of counties, though within the flux and reflux of the tide; except in the particular instances of mayhem and homicide, done in great rivers, beneath the bridges near the sea, which depended on statute 15 Rich. II. c. 3. (*Infra*.) In general, it is said, that such parts of the rivers, arms or creeks, are deemed to be within the bodies of counties, *where persons can see from one side to the other*. Lord *Hale*, in his treatise, (*De Jure Maris*), says, that arm or branch of the sea which lies within the *fauces terræ*, where a man may reasonably discern between shore and shore, is, or at least may be, within the body of a county. *Hawkins*, however, considers the line more accurately confined by other authorities to such parts of the sea, where a man standing on one side of the land may see what is done on the other; and the reason assigned by Lord *Coke*, in the Admiralty case, 13 *Rep.* 52, in support of the county coroner's jurisdiction, where a person is killed in such places, *because that the county may well know it*, seems rather to support the more limited construction. But at least, where there is any doubt, the jurisdiction of the common law ought to have the preference. (2 *East's P. C.* c. 17, s. 10.)

In a case at the Admiralty Sessions, of a murder committed in a ship in a part of Milford Haven, never known to be dry except at the very lowest tide, and which was about three miles over, about seven or eight miles from the mouth of the river or open sea, and about sixteen miles below any bridges over the river, a question was made whether the place where the murder was committed was to be considered as within the limits to which commissions granted under stat. 28 Hen. VIII. c. 15, do by law extend. Upon reference to the judges, they were unanimously of opinion that the trial was properly had; and it is said that during the discussion of the point, Lord *Hale's* construction of this Act (in 2 *Hale*, P. C. 16, 17, 18) was much preferred to the doctrine of Lord *Coke*, (in 3 *Inst.* 111; 4 *Inst.* 134,) and that most, if not all, of the judges seem to think that the common law has a concurrent jurisdiction with the admiralty in this haven and in all other havens, creeks, and rivers in this realm of this nature, although in the body of a county(a). (*Bruce's case*, 2 *Leach*, C. C. 1093; 1 *East's P. C.* 368; *Russ. & R. C. C.* 243, S. C.; 2 *Hale*, 19.)

An inland sea belongs to the counties respectively by which it is bounded, and therefore the Bristol Channel between the counties of Somerset and Glamorgan is to be considered as within the counties by the shores of which its several parts are respectively bounded. (*Reg v. Cun-*

(a) The words "although in the body of a county," are to be found only in the latter report of *Russ. & R. C. C.* 243.

ningham, 1 *Bell*, C. C. 72; 28 *L. J. M. C.* 66, S. C.) Where a felonious assault was committed on board a ship as she was approaching the Penarth Roads, and when she was on the sea below low water mark, and at a spot between the Holms and the county of Glamorgan, but outside any line that could be drawn from Penarth Head to Lavernock Point, and it appeared that the Holms had been treated as part of the parish of Cardiff, and of the county of Glamorgan, it was held that the offence had been committed within the body of the county of Glamorgan. (*Id.*)

Upon the open sea shore the common law and admiralty have alternate jurisdiction over the space between *high and low water mark*, (3 *Inst.* 113; 2 *Hale's P. C.* 17,) so that if a man stricken on the high sea die on the shore on the reflux of the tide, the case is out of the admiral's jurisdiction. (*R. v. Lacy*, 2 *Hale's P. C.* 17, 20; 1 *East's P. C.* c. 5, s. 131.) And the part of the sea lying between high and low water mark is part of the adjoining county, and within the jurisdiction of the justices for the county. (*Embleton v. Brown*, 30 *L. J. M. C.* 1; 3 *E. & E.* 234, S. C.; *R. v. Musson*, 27 *L. J. M. C.* 100; 8 *E. & B.* 900, S. C.) And where an information is laid against a person for attempting to take fish in a fishery of which the prosecutor has the exclusive right of fishery between high and low water mark, the justices of the county have jurisdiction, notwithstanding the tide be full, and the sea covers the place where the offence is committed. (*Embleton v. Brown*, *ubi sup.*)

The 24 & 25 Vict. c. 100, ss. 9, 10, (set out, *post*, p. 46,) give no jurisdiction to the courts here over a homicide to inquire into the death, committed by one foreigner on another foreigner in a foreign vessel on the high seas, though if the offender had been a British subject it had been otherwise. (*R. v. Lewis*, 1 *D. & B. C. C.* 182; 26 *L. J. M. C.* 104.) The above case was decided upon the 9 Geo. IV. c. 31, which, however, is now repealed; but its provisions are re-enacted in the above section. Where a foreigner on board a British ship maliciously wounds another foreigner, one of the crew of the same ship, whilst on the high seas, he has committed an offence against the English laws, and may be tried in the county in which he happens to be in England under the 18 & 19 Vict. c. 91, s. 21. The Merchant Shipping Act Amendment Act. (*Reg. v. Lopez*, 1 *D. & B. C. C.* 525; 27 *L. J. M. C.* 48.)

So a foreigner who commits murder on an English steamer on the high seas as he was being brought from Hamburg to England in custody on a charge of larceny, may be tried by the Central Criminal Court if he is actually present at his trial within that jurisdiction, for he is none the less found within the jurisdiction because he was brought there against his will. (*Reg. v. Sattler*, 1 *D. & B.* 539; 27 *L. J. M. C.* 48.) And the master of a British ship who, under a contract with the Chilean Government, brought Chilean subjects against their will from Chili to England, was deemed guilty of false imprisonment against our laws as soon as he had passed out of Chilean waters on to the high seas. (*R. v. Lesley*, 1 *Bell C. C.* 220; 29 *L. J. M. C.* 97.)

Jurisdiction by Statute.—The statute 15 Rich. II. c. 3, authorises the admiral "to enquire of deaths and mayhems done in ships being and hovering in the main streams of great rivers, only beneath the bridges of the same rivers nigh the sea." This jurisdiction is, however, concurrent with and does not supersede the common law jurisdiction. (2 *Hale*, 16, 54; 1 *East's P. C.* 368.)

See now the statute 7 Vict. c. 2, *post*, p. 45.

2. Mode of trial.

Between high and low water mark.
An alternate jurisdiction.

Jurisdiction as to person.

24 & 25 Vict.
c. 94, s. 9.

18 & 19 Vict.
c. 91, s. 21.

Jurisdiction by statute.

II. Mode of Trial.

By statute 28 Hen. VIII. c. 15, A. D. 1536, *treasons, felonies, robberies, murders, and confederacies* committed in or upon the sea, or in any

Trial by jury of offences at sea.

2. Mode of trial.

By special commission under 28 Hen. VIII.

haven, river, creek, or place were *the admiral* has or *pretends to have jurisdiction*, shall be tried according to the course of common law, and in such places and counties as shall be appointed by the king's commission (a), in like manner and form as if the same had been committed upon land.

Previous to this Act a person who had committed an offence on the high seas or in the Admiralty jurisdiction, could only be prosecuted in the High Court of Admiralty, held before the lord high admiral or his deputy, according to the course of the civil law and not by a jury, and therefore, according to the maxims of Roman jurisprudence, he could not be convicted or sentence of death given without proof by two witnesses or his confession. (See 4 *Steph. Com.* 18; *Com. Dig. Admiralty*, E. 5.) This statute, it will be observed, obviates this evil.

This statute merely alters the *mode of trial* in the Admiralty Court, and it does not enlarge or narrow its jurisdiction as it stood before the passing of it; (*Com. Dig. Admiralty*, E. 5;) and it does not, neither does the 39 Geo. III. c. 37, *infra*, take away any jurisdiction as to the trial of offences which might before have been tried in a court of common law; and therefore an indictment for a conspiracy on the high seas is triable at common law, on proof of an overt act on shore, in the county where the venue is laid. (4 *East*, 164.)

The statute does not give the admiral jurisdiction in any river, creek, or port within the body of a county; and the main question of jurisdiction arising on the statute is, whether the fact happened at any place within the body of a county? If it did, the trial must be had before the ordinary jurisdiction; for the admiral can have no jurisdiction there, unless by positive statute. (1 *Russ.* 144; 4 *Inst.* 137; 15 *Rich.* II. c. 3, *ante*, 43.)

With respect to the words in the Act, "*where the admiral pretends to have power*," they are not to be extended to such a pretence as is without any right at all. (2 *Hale's P. C.* 17; 1 *Hawk. P. C.* c. 37, s. 11; 4 *Inst.* 137; 2 *East's P. C.* c. 17, s. 10.) Thus, a felony committed between high and low water mark, after the water is reflowed, is not within the admiral's jurisdiction by these words; (2 *Hale's P. C.* 17;) but these words are to be understood between the high and low water marks; (3 *Inst. supra*;) and in great rivers, where the sea flows and reflows below the first bridges, and also in creeks of the sea, at full water, where the sea flows and reflows, and upon high water upon the shore, though these are possibly within the body of the county; for there at least, by statute 15 *Rich.* II., they have a jurisdiction, and thus, accordingly, it has been constantly used in all times, even when common law judges have been named and sat in their commission; but the words *pretend to have* must not be extended to such a pretence as is without any right at all, as if the admiral pretend jurisdiction on the shore when the water is reflowed, yet he hath no cognizance of a felony committed there. (*Lacy's case*, 2 *Hale's P. C.* 17; *ante*, 49.)

The jurisdiction for the trial of offences under the statute of 28 Hen. VIII. c. 15, only extended to the offences therein named, viz., *treasons, felonies, robberies, murders, and confederacies*, and did not give countenance of any felony not a felony on land, nor to any new created felony created by statute since the passing of that Act. (See *Rex v. Snape*, 2 *East's P. C.* 807; 2 *Hawk.* c. 25, s. 43.)

To remedy this, the statute 39 Geo. III. c. 37, enacts, "*that all offences committed on the high seas, out of the body of any county, shall be offences of the same nature, and liable to the same punishments, as if they had been committed on shore, and shall be inquired of, heard, tried, and adjudged as offences under statute 28 Hen. VIII. c. 15.*"

Upon the statute 28 Hen. VIII. c. 15, a doubt arose whether one who was accessory at land to a felony committed at sea, was triable by

Accessaries.

(a) See the form of the commission, 2 *East's P. C.* 795; 4 *Chit. C. L.* 160.

the admiral within the purview of it; (*Yelv.* 134; 13 *Co.* 51;) but by the statute 11 & 12 Will. III. c. 7, made perpetual by 6 Geo. I. c. 19, accessaries to piracy may be inquired of according to the statute 28 Hen. VIII. c. 15.

2. Mode of trial.

By the 24 & 25 Vict. c. 94, s. 7, "Where any person shall, within the jurisdiction of the Admiralty of England or Ireland become an accessary to any felony, whether the same be a felony at common law, or by virtue of any Act passed or to be passed, and whether such felony shall be committed within that jurisdiction or elsewhere, or shall be begun elsewhere and completed within that jurisdiction, the offence of such person shall be felony, and in any indictment for any such offence the venue in the margin shall be the same as if the offence had been committed in the county or place in which such person shall be indicted, and his offence shall be ascribed to have been committed 'on the high seas;' but nothing therein contained is to affect the laws relating to the government of Her Majesty's land or naval forces."

Accessaries.

Venue.

As to the offences of accessaries before the fact to a felony committed on the high seas, see *Reg v. Wallace*, 2 *Moo. C. C.* 200; *Car. & M.* 200. See title "*Accessary*."

The statute of Hen. VIII. required a special commission to issue from time to time for the trial of persons charged with offences on the high seas, and in order to get rid of the issuing of these special commissions, it is provided by the 7 & 8 Vict. c. 2, s. 1, that Her Majesty's justices of assizes, or others Her Majesty's commissioners, by whom any court shall be holden under any of Her Majesty's commissions of *oyer* and *terminer*, or general gaol delivery, shall have severally or jointly all the powers which by any Act are given to the commissioners named in any commission of *oyer* and *terminer* for the trying of offences committed within the jurisdiction of the Admiralty of England, and that it shall be lawful for the first-mentioned justices and commissioners, or any one or more of them to inquire of, hear, and determine all offences alleged to have been committed on the high seas, and other places within the jurisdiction of the Admiralty of England, and to deliver the gaol in every county and franchise within the limits of their several commissions, of any person committed to or imprisoned therein for any offence alleged to have been committed upon the high seas, and other places within the jurisdiction of the Admiralty of England, and all indictments found, and trials and other proceedings had by and before the said justices and commissioners, shall be valid. And it shall be lawful for the court to order the payment of the costs and expenses of the prosecution of such offences in the manner prescribed by the 7 Geo. IV. c. 64, in the case of felonies tried in the High Court of Admiralty.

By Justices of
Assize under
7 & 8 Vict. c. 2.

But before this statute, it had been enacted by the Central Criminal Court Act, 4 & 5 Will. IV. c. 36, s. 22, that it should be lawful for the justices and judges of *oyer* and *terminer* and gaol delivery to be named in and appointed by the commission to be issued under the authority of that Act, or any two or more of them, to inquire of, hear, and determine any offence or offences committed or alleged to have been committed on the high seas, and other places within the jurisdiction of the Admiralty of England, and to deliver the gaol of Newgate of any person or persons committed to or detained therein for any offence or offences alleged to have been done and committed upon the high seas aforesaid within the jurisdiction of the Admiralty of England, and all indictments found, and trials and other proceedings had and taken by and before the said justices and judges of *oyer* and *terminer* and gaol delivery should be valid and effectual to all intents and purposes whatsoever; and that it should and might be lawful for any three of the said justices and judges of *oyer* and *terminer* and gaol delivery to order and direct the payment of the costs and expenses of such prosecutions in manner prescribed and directed by the before recited Act of the 7 Geo. IV. c. 64.

In Central Criminal
Court.

2. Mode of trial.

Indictments.

Venue.

Averments of place.

And it is provided by the 7 & 8 Vict. c. 2, s. 4, that nothing therein contained should "affect the jurisdiction belonging to the Central Criminal Court for the trial of persons charged with offences committed on the high seas, and other places within the jurisdiction of the Admiralty of England, or to restrain the issue of any special commission under the 28 Hen. VIII. c. 15, for the trial of such offenders, if need shall be."

Indictments for offences committed within the Admiralty jurisdiction are legislated for, to a certain extent, in the second section of the 7 Vict. c. 2, where it is enacted, that in all indictments preferred before the justices and commissioners mentioned in the first section, "the venue laid in the margin shall be the same as if the offence had been committed in the county where the trial is had; and all material facts, which in other indictments would be averred to have taken place in the county where the trial is had, shall, in indictments prepared and tried under this Act, be averred to have taken place 'on the high seas.'"

If the material facts are averred to have taken place on the high seas, it is unnecessary to aver also that they took place within the jurisdiction of the Admiralty, notwithstanding the first section. (*Reg. v. Jones*, 1 Den. C. C. 101.) An indictment at the assizes under this Act, for murder committed on the high seas, need not conclude *contra formam statuti*. (*Reg. v. Serva*, 2 C. & K. 53.)

It seems that the provision in the 7 & 8 Vict. c. 2, as to the averment "on the high seas," is only directory. (*Reg. v. Menham*, 1 F. & F. 367.)

Offences against the person.

By 24 & 25 Vict. c. 100, s. 10, where any person, being feloniously stricken, poisoned, or otherwise hurt, upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt, in England or Ireland, or being feloniously stricken, poisoned, or otherwise hurt, at any place in England or Ireland, shall die of such stroke, poisoning, or hurt, upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, may be dealt with, inquired of, tried, determined, and punished, in the county or place in England or Ireland, in which such death stroke, poisoning, or hurt, shall happen, in the same manner, in all respects, as if such offence had been wholly committed in that county or place. See as to this action in its application to foreigners, *ante*, p. 43. For a similar enactment as to the Colonies, see *post*, p. 49.

UNDER PARTICULAR STATUTES.

Larceny.

With respect to offences against the Larceny Act (24 & 25 Vict. c. 96), it is provided by section 115, that all indictable offences mentioned in this Act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined, in any county or place in which the offender shall be apprehended, or be in custody; and in any indictment for any such offence, or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed 'on the high seas;' provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Framed on the 7 & 8 Geo. IV. c. 29, s. 77, and on the Irish Act, 9 Geo. IV. c. 55, s. 74. See also the 7 & 8 Vict. c. 2, *supra*. So far as respects accessories, the provision is merged in this 24 & 25 Vict. c. 94, ss. 7—9, *vide ante*, p. 45.

Jurisdiction of quarter sessions.

The Court of Quarter Sessions has power to try cases respecting

offences committed on the high seas, when the prisoner is apprehended or is in custody within the jurisdiction of the Quarter Sessions. (*Reg. v. Peel*, 32 L. J. M. C. 65; 1 L. & C. 231.)

With respect to malicious injuries to property, it is provided by the 24 & 25 Vict. c. 97, s. 72, that all indictable offences mentioned in this Act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined, in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner, in all respects, as if they had been actually committed in that county or place; and in any indictments for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

The Court of Quarter Sessions have jurisdiction under this section over offences committed on the high seas, when the prisoner is apprehended or is in custody within that jurisdiction. (*Reg. v. Peel*, *supra*.)

And with respect to forgery, it is provided, by the 24 & 25 Vict. c. 98, s. 50, all indictable offences mentioned in this Act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined, in any county or place in England or Ireland, in which the offender shall be apprehended or be in custody, in the same manner, in all respects, as if they had been actually committed in that county or place; and in any indictments for any such offence, or for being an accessory for any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Framed on the 11 Geo. IV., and 1 Will. IV. c. 66, s. 27. See also the 7 & 8 Vict. c. 2 (unrepealed), which is thus extended to Ireland. So far as respects accessaries, this provision is merged in the 24 & 25 Vict. c. 94, ss. 7—8, *vide ante*, p. 45.

And with respect to offences against the coinage, it is enacted by the 24 & 25 Vict. c. 99, s. 36, that all indictable offences mentioned in this Act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined, in any county or place, in England or Ireland, in which the offender shall be apprehended or be in custody, in the same manner, in all respects, as if the same had been actually committed in that county or place; and in any indictment for any such offence, or for being accessory to any such offence, the venue in the margin shall be the same as if such offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas." [And where any of the crimes and offences, or high crimes and offences, mentioned in this Act, shall be committed at sea, and the vessel in which the same shall be committed shall be registered in Scotland, or touch at any port thereof, the courts of criminal law of Scotland may inquire, try, and determine the same, in the same manner as if such crime and offence, or high crime and

2. Mode of Trial.

Malicious injuries to property.

Forgery.

Coinage.

2. *Mode of Trial.*

offence, had been committed in Scotland.] Provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Framed on the 2 & 3 Will. IV. c. 34, s. 20. So far as respects accessaries, this provision is merged in the 24 & 25 Vict. c. 94, s. 9. See *ante*, p. 35.

The Court of Quarter Sessions has power to try offences against this Act, committed on the high seas, when the prisoner is apprehended or is in custody within that jurisdiction. (*Reg. v. Peel*, 32 L. J. M. C. 65; 1 L. & C. 23.)

Offences against the person.

And with respect to offences against the person, it is enacted by the 24 & 25 Vict. c. 100, s. 68, all indictable offences mentioned in this Act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined, in any county or place, in England or Ireland, in which the offender shall be apprehended or be in custody, in the same manner, in all respects, as if they had been actually committed in that county or place, and in any indictment for any such offence, or being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Framed on the 9 Geo. IV. c. 31, s. 32, and the Irish Act, 10 Geo. IV. c. 34, s. 41. So far as respects accessaries, this offence is merged in the 24 & 25 Vict. c. 94, ss. 7—9, *vide ante*, p. 45.

A Court of Quarter Sessions may have jurisdiction to try an offence committed on the high seas against this Act. (*R. v. Peel*, *ubi supra*.)

Offences by seamen.

Offences by Seamen.—With respect to offences committed by *British seamen* on the high seas, see tit. "*Ships*." But it may be here mentioned, that the Merchant Shipping Act (17 & 18 Vict. c. 104, ss. 267, 268, 269, 270) contains provisions with respect to such offences. By the 267th section, "All offences against property or person committed in or at any place, either ashore or afloat, out of Her Majesty's dominions, by any master, seaman, or apprentice, who at the time when the offence was committed, is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and to be inquired of, heard, tried, determined, and adjudged, in the same manner, and by the same courts, and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England." And provision is made with respect to costs and expenses. In section 268, power is given to a consular officer to order the master of a ship to convey a criminal to the United Kingdom, or to a British possession, and provides that "every such master shall, on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other magistrate empowered by law to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed on the high seas." And by section 270, "In any legal proceedings before any judge or magistrate, &c., upon due proof that any necessary witness cannot be found in the United Kingdom or British possession, according to the place where the injury takes place, any deposition such witness may have previously made on oath in relation to the same matter, before any magistrate in Her Majesty's dominions, or consular officer elsewhere, shall be admissible in evidence, subject to the following

restrictions ; that is to say, (1) If such deposition was made in the United Kingdom it shall not be admissible in any proceedings instituted in the United Kingdom. (2) If such deposition was made in any British possession it shall not be admissible in any British possession. (3) If the proceeding is criminal it shall not be admissible unless it was made in the presence of the person accused, and then provision is made as to the mode of proof of such deposition.

And by the Merchant Shipping Amendment Act, (18 & 19 Vict. c. 91, s. 21.) "If any person, being a British subject, charged with having committed any crime or offence on board any British ship, on the high seas, or in any foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence, on board any British ship on the high seas, is found within the jurisdiction of any court of justice within Her Majesty's dominions, which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case, as if such crime or offence had been committed within such limits." But nothing in the above Act is to affect the prosecution and trial in the colonies of offences committed within the jurisdiction of the Admiralty, under the 12 & 13 Vict. c. 96. The prisoner in *Reg. v. Lopez*, (1 D. & B. 525 ; ante, p. 43,) was tried under this Act.

By 12 & 13 Vict. c. 96, s. 3, it is enacted, "That where any person shall die in any colony of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished, in such colony, in the same manner, in all respects, as if such offence had been wholly committed in that colony; and that if any person, in any colony, shall be charged with any such offence as aforesaid, in respect of the death of any person who, having been feloniously stricken, poisoned, or otherwise hurt, shall have died of such stroke, poisoning, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, such offence shall be held, for the purpose of this Act, to have been wholly committed upon the sea.

3. Expenses of Prosecutions, &c.

Offences by British seamen.

Provision for the trial of murder and manslaughter, where the death only happens in the colony or upon the sea.

III. Expenses of Prosecutions, &c.

By the 7 Geo. IV. c. 64, s. 27, for enabling the High Court of Admiralty to order the payment of the costs and expenses of prosecutors and witnesses, and compensation for their trouble and loss of time, in cases in which other courts have a like power under this Act, it is enacted, "That it shall be lawful for the judge of the said Court of Admiralty, in every case of felony, and in every case of misdemeanour of the denominations hereinbefore enumerated, committed on the high seas, to order the assistant to the counsel for the affairs of the admiralty and navy to pay such costs, expenses, and compensation, to prosecutors and witnesses, in like manner as other courts may order the treasurer of the county to pay the same ; and such assistant is hereby authorised and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts." For the enumeration of misdemeanours mentioned in the above section, see *post*, tit. "Costs."

For payment of expenses in prosecutions in the Court of Admiralty.

3. *Expenses of Prosecutions, &c.*

By 7 & 8 Vict. c. 2, s. 1, the Court may order the payments of the costs and expenses of the prosecution, in the same manner as prescribed in the 7 & 8 Geo. IV. c. 64. The 4 & 5 Will. IV. c. 36, s. 22, contains a similar provision as to costs.

By 17 & 18 Vict. c. 104, s. 267 (Merchant Shipping Act), the costs of the prosecution of any such offence as is therein mentioned may be directed in the same manner as costs of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

IV. Punishment of Offences.

Punishment of offences in jurisdiction of.

With respect to the punishment of offences committed in the jurisdiction of the Admiralty, it is by the statute 7 & 8 Geo. IV. c. 28, s. 12, enacted, "That all offences prosecuted in the High Court of Admiralty of England, shall, upon every first and subsequent conviction, *be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land.*"

As to the punishment of offences in particular offences, see the respective statutes.

V. Summary Powers of Justices in respect of Admiralty Offences.

Justices may issue warrant to apprehend a person charged with an offence committed on high seas.

Justices may issue a warrant to apprehend for offences committed on the high seas, under the 11 & 12 Vict. c. 42, s. 2, wherein it is enacted, "That in all cases of indictable crimes or offences, of any kind or nature whatsoever, committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have a claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of Her Majesty's justices of the peace, for any county, riding, division, liberty, city, borough, or place, within England or Wales, in which any person charged with having committed, or with being suspected to have committed, any such crime or offence, shall reside, or be, or shall be supposed or suspected to reside or be, to issue his or their warrant to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law."

Commitment of offenders for offences on high seas.

By the 7 Vict. c. 2, s. 3, "The justice or justices by whom any information shall be taken, touching any offence committed within the jurisdiction of the Admiralty of England, under the provisions of the 7 Geo. IV. c. 38, if he or they shall see cause thereupon to commit such person to take his trial for such offence, shall commit him to the same prison to which he would have been committed to take his trial at the next court of *oyer* and *terminer* and general gaol delivery if the offence had been committed on land within the jurisdiction of the same justice or justices, and shall have authority to bind by recognizance all persons who shall know or declare anything material touching the said offence to appear at the said next court of *oyer* and *terminer* and general gaol delivery, then and there to prosecute or give evidence against the party accused, and shall return all such informations and recognizances to the proper officer of the court in which the trial is to be, at or before the opening of the court, and every such offender shall be arraigned, tried, and sentenced, as if the

offence had been committed within the county, riding, or division, for which such court shall be holden."

And see the 11 & 12 Vict. c. 42, s. 25, in which section a power to bail such offenders is also conferred.

As to the jurisdiction of justices over offences committed on the high seas against the customs and excise laws, and their power of mitigating penalties, see *post*, tit. "*Excise and Customs*," Vol. II.

6. *Offences relating to.*

Excise and customs.

VI. Offences relating to the Admiralty.

By 28 & 29 Vict. c. 124, s. 6, "If any person, in order to sustain any claim to any pay, wages, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half pay, pension, or allowance from the compassionate fund of the navy, or other money payable by the Admiralty, or to any effects or money in charge of the Admiralty,—or in order to procure any person to be admitted a pensioner as the widow of an officer of the navy,—does any of the following things, namely,—offers or utters to any person in the service of the Crown or of the Admiralty any false affidavit, knowing the same to be false, or makes or subscribes, or offers or utters as aforesaid any false written petition, application, statement, answer, certificate, or voucher, or other false writing, knowing the same to be false,—every such person shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, or on summary conviction before a justice, sheriff, or magistrate, shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour."

Punishment for uttering false petitions, certificate, &c.

Sect. 7. "The following sections of the Act of the session of the twenty-fourth and twenty-fifth years of Her Majesty's reign (chapter ninety-eight), 'to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery,' shall be incorporated with this Act, and shall be read as if they were here re-enacted, namely,—sections forty to forty-two and fifty to fifty-three (all inclusive); and for this purpose the expression 'this Act' used in the said incorporated sections shall be construed to include the present Act, and expressions therein used relating to forgery or forged writings shall be construed to apply to any act being a misdemeanour under the last foregoing provision of this Act, and to writings made, subscribed, offered, or uttered in contravention of that provision."

Parts of 24 & 25 Vict. c. 98, incorporated.

Sect. 8. "If any person, in order to receive any pay, wages, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half pay, pension, or allowance from the compassionate fund of the navy, payable or supposed to be payable by the Admiralty, or any other money so payable or supposed to be payable, or any effects or money in charge or supposed to be in charge of the Admiralty, falsely and deceitfully personates any person entitled or supposed to be entitled to receive the same, every such person shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, or on summary conviction before a justice, sheriff, or magistrate, shall be liable to be imprisoned for any term not exceeding six months, with or without hard labour."

Punishment for personation of seamen, &c.

Sect. 9. "Nothing in this Act shall prevent any person from being proceeded against and punished under any other Act or at

Saving for punishment under other Acts, &c.

1. *Interpretation Clause.* common law, in respect of an offence (if any) punishable as well under this Act as under any other Act or at common law."

As to jurisdiction of justices with respect to seamen's wages, see tit. "*Seamen, Ships.*"

Warrant of apprehension.

Commence and conclude as usual.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any county of the realm, and within the jurisdiction of the Admiralty of England."

VII. *Forms.* (a)

Adulteration of Articles of Food or Drink.

[23 & 24 Vict. c. 84.]

- I. *Interpretation Clause*, 52.
- II. *Penalty on Persons selling, as Pure and Unadulterated, any Article which is Adulterated and not Pure*, 53.
- III. *Analysts, appointment of—Mode of Analysis*, 53.
- IV. *Evidence before Justices*, 53.
- V. *Appeal*, 54.
- VI. *Penalties, Mode of Procedure*, 55.
- VII. *Ireland*, 55.
- VIII. *Forms*, 56.

I. *Interpretation Clause.*

THE Act recites that the practice of adulterating articles of food and drink for sale in fraud of Her Majesty's subjects, and to the great hurt of their health, requires to be repressed by more effectual laws than those which were then in force for that purpose. Rules for interpretation are given by the Act, ss. 13, 14. By section 14, the words "articles of food or drink" shall (if not inconsistent with the contents or subject-matter) include not only all alimentary substances, whether solids or liquids, but also all eatables or drinkables whatsoever, not being medical drugs or articles usually taken or sold as medicines, but this Act shall not be construed so as to effect the ordinary reduction of the strength of foreign, British, or colonial spirits, by persons licensed and paying duties under the excise.

Sect. 13. Nothing in this Act contained shall be held to effect the power of proceeding by indictment, or to take away any other remedy against any other offender under this Act.

Remedy by indictment preserved.

(a) See form of Admiralty Commission, 2 East's P. C. 795; 4 Ch. C. L. 160.

II. Penalty on Persons selling, as pure and unadulterated, any Article which is not pure.

Sect. 1. Every person who shall sell any article of food or drink with which, to the knowledge of such person, any ingredient or material injurious to the health of persons eating or drinking such article has been mixed, and every person who shall sell, as pure and unadulterated, any article of food or drink which is adulterated or not pure, shall for every such offence, on a summary conviction of the same before two justices of the peace at petty sessions in England, and in Scotland before two justices of the peace in justice of the peace court, or before the sheriff substitute of the county, or before justices at petty sessions, or a divisional justice in Ireland, forfeit and pay a penalty not exceeding 5*l.*, together with such costs attending such conviction as to the said justices shall seem reasonable, and if any person so convicted shall afterwards commit the like offence, it shall be lawful for such justices to cause such offender's home, place of abode, and offence, to be published at the expense of such offender, in such newspaper, or in such other manner as to such justices shall seem desirable.

4. Evidence before Justices.

Knowingly selling article of food or drink with ingredient injurious to health.

Selling, as pure and unadulterated, what is adulterated and not pure.

III. Analysts, appointment of—Mode of Analysis.

Sect. 3. In the City of London and the liberties thereof, the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in the execution of the Act for the better Local Management of the Metropolis in England and Ireland, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, and in Scotland the Commissioners of Supply at their ordinary meetings for counties, and town councils within their several jurisdiction, may from time to time, for their respective city, districts, counties, or boroughs, appoint or remove one or more persons possessing competent medical, chemical, and microscopical knowledge as analysts of all articles of food and drink purchased within the said city, metropolitan districts, counties or boroughs, and may pay to such analysts such salary or allowances as they may think fit; but such appointments and removals shall at all times be subject in Great Britain to the approval of one of Her Majesty's principal secretaries of state, and in Ireland to that of the Lord Lieutenant.

Appointment of.

IV. Evidence before Justices.

Sect. 2. On the hearing by the justices of any complaint under this Act, in any district, county, or borough, wherein any analyst shall have been appointed, the purchaser shall prove to the satisfaction of such justices that the seller of the article of food or drink alleged to be adulterated, or his servants, had such notice of the intention of the purchaser to have such article analysed, and also such opportunity of accompanying the purchaser to any analyst appointed by this Act, as the justices shall think reasonable, in order to secure such article from being tampered with by the purchaser.

Evidence before justices.

Sect. 4. Any purchaser of any article of food or drink, in any district, county, city, or borough, where there is any analyst appointed under this Act, shall be entitled, on payment to the analyst of a sum not less than 2*s.* 6*d.* nor more than 10*s.* 6*d.*, to have any such

4. *Evidence
before
Justices.*

article analysed by any analyst who may be appointed for such district, county, city, or borough, and to receive from such analyst a certificate of the result of his analysis, specifying whether, in his opinion, such article is adulterated, and also whether it is so adulterated as to be injurious to the health of persons eating or drinking the same, and such certificate, duly signed by such analyst, shall, in the absence of any evidence to the contrary, be sufficient evidence before the justices, or in any court of justice, of the matters therein certified, and the sum so directed to be paid for such certificate shall be deemed part of the costs.

Sect. 5. The justices before whom any complaint may be made under this Act may, in their discretion, cause any article of food or drink to be examined and analysed by such skilled person as they may appoint for that purpose, who may be required to give evidence of the same at the hearing of the case; and the expense thereof, and of such examination and analysis, if not paid by the complainant or party complained against, shall be deemed part of the expenses of executing this Act, but, nevertheless, such expenses may be ordered by such justices to be paid by the party so complaining or complained against as they think proper.

V. Appeal.

Sect. 6. Any person who has been convicted of any offence punishable by this Act by any justices, may appeal to the next general or quarter sessions of the peace, which shall be held for the city, county, town, or place, wherein such judgment or conviction shall have been made, or in the case of the conviction having been before a sheriff-substitute in Scotland, then the appeal shall be to the sheriff of the county, provided that such person enter into recognizance within two days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, or sheriff, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognizance; and the court of such general or quarter sessions, or sheriffs, are hereby authorised and required to hear and finally determine the matter of every such appeal, and may award such costs to the party appealing or appealed against as they shall think proper.

Sect. 7. If any such conviction, or judgment, or order of forfeiture, shall happen to be made within six days before any general or quarter session of the peace shall be held for the city, county, town, or place, wherein such conviction shall have been made, the person who shall think himself aggrieved by any such conviction may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or next following general or quarter sessions of the peace which shall be held for any such city, town, or place, wherein any such conviction shall have been made, on giving six days' notice to the complainant of his intention to appeal.

Sect. 8. Any person who shall have been convicted by any justices or sheriff-substitute of any offence punishable by this Act, in respect of the selling of any article of food or drink which shall have been manufactured according to any process patented before the passing of this Act, either by the patentee or owner of the patent, or by any person carrying on his business, or otherwise claiming under him, during the continuance of such patent, may, instead of appealing to the

general or quarter sessions of the peace, or sheriff of the county, apply in writing within five days after such conviction to the justices or sheriff-substitute, to state and sign a case for the opinion of one of the superior courts of law thereon, in like manner as, under the statute 20 & 21 Vict. c. 43, he might have applied to the justices to state and sign a case, and thereupon all such proceedings shall take place upon and in relation to such application, and all such provisions shall be applicable thereto, as would have taken place upon and in relation thereto, and been applicable thereto, under the provisions of the said last-mentioned Act, and in Scotland, for the purposes of such appeal, the justices or sheriff may state and sign a case for the opinion of the court of sessions, in like manner as the justices in England and Ireland may, for the opinion of the superior courts of law under the said Act, and the court of sessions shall have in relation thereto the like power as the superior courts have under the said Act, and all the other provisions of the said Act shall be applicable to such appeal.

7. *Ireland.*

VI. Penalties—Mode of Procedure.

Sect. 9. In England the provisions in the Nuisances Removal Act for England, 1855, as to procedure, and the provisions of the Act 11 & 12 Vict. c. 43, intituled "An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders," and in Scotland the ordinary rules regulating the procedure of justices of the peace, so far as the same are respectively applicable, shall extend and apply to cases arising under this Act in England or Scotland; and all moneys arising from penalties under this Act in any county, city, district, or borough, where there are analysts appointed under this Act, shall, when paid or recovered, be paid in England and Ireland to the vestry, district board, commissioners, county treasurer, or town council, for such county, city, district, or borough respectively, to be applied for the general purposes of such vestry, district board, commissioners, county, city, or borough respectively, and to the collector of rogue money for each county in Scotland.

Sect. 12. The expense of executing this Act shall be borne, in the City of London and the liberties thereof, out of the consolidated rates raised by the Commissioners of Sewers of the City of London and the liberties thereof; in the rest of the metropolis, out of any rates or funds applicable to the purposes of the Act for the better Local Management of the Metropolis, and in counties out of the county rate, and in boroughs out of the borough fund, or out of the rogue money in counties in Scotland.

VII. Ireland.

Sect. 10. All proceedings under this Act in Ireland as to compelling the appearance of any such person, or of any witness, and as to the hearing and determination of such complaints, and as to the making and executing of such orders, and as to the applications of fines, amerciaments, and forfeited recognizances, imposed or levied under this Act at petty sessions, shall be subject in all respects to the provisions of "The Petty Sessions (Ireland) Act, 1851," as the same is amended by "The Petty Sessions Clerk (Ireland) Act, 1858," (when the case shall be heard in any petty sessions district,) and to the provisions of the Acts relating to the divisional police offices, (when the case shall be heard in the police district of

7. Ireland.

Dublin Metropolis,) so far as the said provisions shall be consistent with any special provisions of this Act; and when any fine or penalty is imposed at any of the divisional police offices of Dublin Metropolis, or by the justices in any corporate town, under the provisions of this Act, such fines and penalties shall be paid over to the same purposes, and appropriated and applied in the same manner as is now by law authorised in respect of fines and penalties imposed at such divisional police offices, or by the justices in any such corporate town respectively.

Sect. 11. In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the order shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the order shall be made by the divisional justices in the police district of Dublin Metropolis, or to the recorder of any corporate or borough town where the order shall be made by any justice or justices in such corporate or borough town (unless where any such sessions shall commence within seven days from the date of any such order, in which case, if the appellant see fit, the appeal may be made to the next succeeding sessions to be held for such division or town); and it shall be lawful for such court of quarter sessions or recorder, as the case may be, to decide such appeal, if made in such form and manner, and with such notices, as are required by the Petty Sessions Act respectively, hereinbefore mentioned, as to appeal against orders made by the justices at petty sessions; and all the provisions of the said Petty Sessions Act respectively, as to making appeals, and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal or like order to be made under the provisions of this Act.

VIII. Forms.

For general powers under 11 & 12 Vict. c. 43, see titles "CONVICTION" and "COMMITMENT," *post*.

The statement of the offences should be as follows:—

For knowingly selling an article of food or drink with an ingredient injurious to health.

For that he, the said A. B., did, on the day of , at the parish of , in the county aforesaid, unlawfully sell to one C. D. a certain article of food [or "drink"], that is to say [describe the article], with which a certain ingredient [or "material"] [name the ingredient] injurious to the health of persons eating [or "drinking," as the case may be] the same had been mixed, he, the said A. B., then and there, well knowing the said injurious ingredient to have been mixed as aforesaid in the said article of food [or "drink"] so sold by him, contrary, &c.

Selling article, as pure and unadulterated, when not pure.

For that he, the said A. B., did, on the day of , at , in the parish of , in the county aforesaid, unlawfully sell to one C. D., as pure and unadulterated, a certain article of food [or "drink," as the case may be], that is to say, , which said article then and there was in truth and fact adulterated, and not pure, contrary to the form of the statute, &c.

Advowson.

THE sale of advowsons in cases where they are vested in, or in trustees for, inhabitants, ratepayers, freeholders, or other persons, forming a numerous class and deriving no pecuniary advantage therefrom, in order that the proceeds of such sales may be applied to the erection, &c. of parsonage houses, and to the augmentation of livings, is authorised by the 19 & 20 Vict. c. 50; and by s. 5, a certificate under the hands of two justices (not being themselves owners), having jurisdiction in the parish, township, district, or place within which the church or benefice in question is situate, certifying that the consent of the owners to a sale of the advowson has been duly obtained, and (in those cases where it is necessary that "elected trustees" be appointed) containing the names, residences, and description of the "elected trustees," shall be sufficient evidence of such consent and of such appointment, and any two justices, having jurisdiction as aforesaid, are hereby authorised and required, on application to them made, and on being satisfied of the truth of the facts, to certify accordingly.

By sect. 15, the owners of an advowson may consent to the borrowing of money from the Governors of Queen Anne's Bounty, or from any other society or persons, for the purposes authorised by 17 Geo. III. c. 53; 21 Geo. III. c. 66; 7 Geo. IV. c. 66; and 1 & 2 Vict. c. 23.

And by sect. 16, the certificate of two such justices as aforesaid, which they are hereby authorised and required to grant on being satisfied of the truth of the fact that such consent has been duly given, shall be conclusive evidence of the fact, and such certificate shall, for all purposes whatever, be deemed the consent of the patron within the meaning of those Acts.

I. What is an Affray.

Certificate by two justices of consent of owners being obtained, and of names of elected trustees (if any) to be sufficient evidence.

Affray.

As to Riots, see *post*, "Riots," Vol. V.

- I. What is an Affray, 57.
- II. How far it may be suppressed by a Private Person, 58.
- III. How far by a Constable, 59.
- IV. How far by a Justice of the Peace, 60.
- V. Punishment of an Affray, 60.
- VI. Forms, 61.

I. What is an Affray.

An affray is a public offence to the terror of the Queen's subjects; so called because (according to Lord Coke) it affrighteth and maketh men afraid. (3 *Inst.* 158.) But, on the one hand, it differs from a riot, and, on the other hand, from an assault, for a riot cannot take place unless three persons at least take part in it, but an affray may be committed by less than three, and whilst an assault may be committed in a private place out of the hearing and seeing of any except the parties concerned, an affray must be committed in a place at least so public as to terrify one or more of the King's subjects. (1 *Hawk.* c. 28, s. 2.) A prize fight in the presence of a number of persons, if fought at a distance from any highway, or in a private place, is not an affray, though it may be an assault; (*Reg. v. Hunt*, 1 *Cox C. C.* 177;) but it may become a riot if resistance is offered to the constables who interfere to prevent it. (*Id.*; *R. v. Billingham*, 2 *C. & P.* 234.) Although no

1. *What is an Affray.*

base words of abuse can carry with them so much terror as to amount in law to an affray, (1 *Hawk.* c. 28, s. 2,) yet it seems certain that in some cases there may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons in such a manner as will naturally cause a terror to the people.

So where there has been an assault, a threat to renew the assault may make an affray. (*Price v. Seeley*, 10 *Cl. & Fin.* 28, 39.)

Statute of
Northampton.

In affirmance of the common law upon this subject, the Statute of Northampton (2 *Edw. III.* c. 3) was passed for the purpose of punishing people who go armed to terrify the King's subjects, and it is thereby enacted, "that no man, great or small, of what condition soever he be, except the King's servants in his presence, and his ministers in executing of the King's precepts or of their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, and the same in such places where such acts happen, be so hardy to come before the King's justices or other of the King's ministers doing their office with force and arms; (2) nor bring no force in affray of the peace; (3) nor to go nor ride armed by night nor day in fairs, markets, nor in the presence of the King's justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King and their bodies to prison at the King's pleasure; (4) and that the King's justices in their presence, sheriffs and other ministers in their bailiwicks, lords of franchises and their bailiffs in the same, and mayors and bailiffs of cities and boroughs within the same cities and boroughs, and borough holders, constables, and wardens of the peace within their wards, shall have power to execute this Act; (5) and that the judges assigned, at their coming down into the country, shall have power to inquire how such officers and lords have exercised their offices in this case, and to punish them whom they find that have not done that. (The 20 *Rich. II.* c. 1, as to the going and riding armed, is repealed by 26 & 27 *Vict.* c. 125, as it was previously by 19 & 20 *Vict.* c. 64.) The statute, it is to be observed, expressly permits the assembling with arms in order to suppress dangerous rioters, rebels, or enemies, and disturbers of the peace generally; (1 *Hawk.* c. 28, s. 10;) and within the exception would come the posse comitatus if raised by the sheriff upon a lawful occasion.

20 *Rich. II.* c. 1,
repealed.

The mere wearing of arms is not a violation of the statute, if not accompanied with acts tending to terrify the people or raise suspicion that an act of violence is intended, as, for instance, if persons are thus assembled by a man only to protect his house from threatened violence or his person from assault. (1 *Hawk.* c. 28, ss. 8, 9; *Sir Jno. Knight's case*, 3 *Mod.* 117.)

Execution of
Statute.

It is said that it has been holden that any justice of the peace, or other person who is empowered to execute this statute, may proceed thereon ex-officio, and if he find any person in arms contrary to the form of the statute, he may seize the arms and commit the offender to prison, and that he ought also to make a record of the whole proceeding and certify the same to the Exchequer. (1 *Hawk.* c. 28, s. 5.) And where a writ under the statute had been directed to a sheriff to remove a force in affray of the peace, it was held, that the undersheriff was justified in executing it, and arresting and imprisoning one making the force, and upon inquiry at another time after the force was removed. (*Levett v. Farrar*, *Cro. Eliz.* 294.)

II. How far it may be suppressed by a Private Person.

Affray stopped
by private person.

Any bystander may and ought to interfere to part those who make an affray, and to stay those who are going to join in it, and may arrest the affrayers and detain them till the heat be over, and then deliver them to a constable present during part of the affray, who may carry

them before a justice of the peace; (*Timothy v. Simpson*, 1 Cr. M. & R. 757; *Reg. v. Pinney*, 5 C. & P. 261, *Tindal*, C. J.); and so long as there is a well founded apprehension of its renewal it may be deemed to be continuing. (*Id.*; *Price v. Seeley*, 10 Cl. & Fin. 28.) So also a bystander may then and there call upon a constable who has seen any affray committed, to take the affrayer into custody and convey him before a magistrate. (*Derecourt v. Corbishley*, 24 L. J. Q. B. 313). And if he receives any harm from the affrayers he shall have his remedy by law against them; and if the affrayers receive hurt by endeavouring only to part them, the bystander may justify the same, and the affrayers have no remedy in law. (3 *Inst.* 158.) And if either of the parties be slain or wounded, or so stricken that he falleth down for dead, in that case the standers by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by hue and cry, and also for his escape they shall be fined and imprisoned. (3 *Inst.* 158.) It is an indictable misdemeanour in a bystander, having the power to do so, not to assist a constable when only called upon by him to stop a breach of the peace. (*R. v. Brown*, Car. & Mar. 314; see *Tindal*, C. J., *R. v. Pinney*, 5 C. & P. 261.) It is a matter of doubt whether a private person who has seen an affray committed may give in charge to a constable who has not, after the affray has entirely ceased. (2 *Hale*, P. C. 90; 1 *East*, P. C. 306; *Timothy v. Simpson*, *ubi sup.*).

3. How far by a Constable.

III. How far it may be suppressed by a Constable.

It seems agreed that a constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable by fine and imprisonment. (1 *Hawk.* c. 28, s. 13; and see *R. v. Brown*, Car. & M. 314.) See tit. "Arrest" (without warrant).

Constable's power
over affrays in
his presence.

And it is said that if a constable see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons, or the like, or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice to find sureties for the peace, or he may imprison him of his own authority for a reasonable time till the heat shall be over, and also afterwards detain him till he find such surety by obligation: but it seems that he has no power to imprison such an offender in any other manner or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence: and it is said that he ought not to lay hands on those who barely contend with hot words without any threats of personal hurt; and that all which he can do in such case is to command them under pain of imprisonment to avoid fighting. (1 *Hawk.* c. 28, s. 14; and see *Howell v. Jackson*, 6 C. & P. 723.)

But he is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them, and, therefore, liable to be objected against as likely to be partial in his own cause, yet he may suppress them; and, therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender in the same manner as if he were no way a party. (1 *Hawk.* c. 28, s. 15.)

A person merely standing in the way with intent to hinder a constable from preventing a breach of the peace, will not justify the constable in giving him a blow, though he may take him into custody. (*Levy v. Edwards*, 1 Car. & P. 40.)

If an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house and he follow with fresh suit, he may break open the doors to take them. (1 *Hawk.* c. 63,

3. *How far by a Constable.*

s. 16.) It should seem, however, a demand of admittance ought to be first made.

But it is said that a constable hath no power to arrest a man for an affray done out of his own view without a warrant from a justice, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, and not to punish the breach of it. (1 *Hawk. c. 28, s. 17*; *Cook v. Nethercote*, 6 C. & P. 741; 1 *East, P. C. 306*; *post*, title, "*Arrest*.") He may, however, it seems, carry those before a justice who were arrested by other persons present at an affray, and who have been thus delivered into his hand. (*Id.*; and see *Reg. v. Tooley*, 2 *Lord Raym.* 1296; *Clifford v. Brandon*, 2 *Camp.* 367; *Timothy v. Simpson*, *ubi sup.*; *semb. aliter Griffin v. Coleman*, 4 *H. & N.* 265.)

Constable's power after affray ceased.

Also a constable who has seen an affray committed hath no power to arrest an affrayer without warrant *after* the affray is ended; (*Cook v. Nethercote*, 6 C. & P. 741; *Reg. v. Walker*, *Dears. C. C.* 358; 23 *L. J. M. C.* 123;) unless he do so in fresh pursuit or to prevent a renewal of it. (*Reg. v. Light*, *D. & B. C. C.* 332; 27 *L. J. M. C.* 1 *S. C.*.) As to the duty of a constable in taking a party into custody for disturbance in a church, see *Williams v. Glennister*, 2 *B. & Cress.* 699; 4 *Dowl. & R.* 217, *S. C.*; *post*, tit. "*Church*."

IV. *How far it may be suppressed by a Justice of the Peace.*

Justice's power over.

There is no doubt but that a justice of the peace may and must do all such things to the aforesaid purpose, which a private man or constable is either enabled or required by the law to do; and in case of an affray within his view, may instantly order the offender to be taken into custody without making out a warrant; (*per cur. Still v. Walls*, 7 *East*, 536;) but it is said that he cannot, without a warrant, authorise the arrest of any person for an affray out of his own view; yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. (1 *Hawk. c. 28, s. 18.*) And upon information that an affray is about to be committed the justice may, upon the parties charged being brought before him, compel them to enter into securities to keep the peace till the next assizes or sessions, or in default commit them to prison. (*R. v. Billingham*, 2 *Carr. & P.* 234; *per Burrough, J.*, 2 *Hawk. c. 28, s. 2.*)

And a justice has a greater power over one who has dangerously wounded another in an affray than either a private person or a constable; for there does not seem to be any good authority that these have any power at all to take sureties of such an offender; but it seems certain that a justice has a discretionary power either to commit him or to bail him till the year and day be past. But it is said that he ought to be very cautious how he takes bail if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined, if he shall appear upon the whole circumstances of the case to have been too favourable. (1 *Hawk. c. 28, s. 19*; see further, *post*, "*Arrest*.")

V. *Punishment of an Affray.*

Punishment of.

All affrays in general are punishable by fine or imprisonment, or both; (1 *Hawk. c. 28, s. 20*;) and a very high fine will be imposed for an affray in a court of justice; (3 *Inst.* 141; 12 *Co.* 71;) and as to an affray in a church, see tit. "*Church*."

Inquirable in the leet.

Affrays are inquirable in the leet as common nuisances. (3 *Inst.* 58.

VI. Forms.

Agricultural Gangs.

Westmoreland. { To the Constable of _____ and all other Constables and
 others whom these may concern.
 Whereas A. I. of _____, yeoman, hath this day made oath before me, J. P.,
 Esquire, one of Her Majesty's justices of the peace for the said county, that, on the
 day of _____, in the year of our Lord _____, A. O., of
 yeoman, and B. O., of _____, yeoman, at _____, in the said county [unlaw-
 fully, in a tumultuous manner, made an affray, to the terror and disturbance of
 Her Majesty's subjects then and there being, wherein the person of the said A. I.
 was beaten and abused by them the said A. O. and B. O. without any lawful
 or sufficient provocation given to them or either of them by him the said A. I.]
 These are, therefore, to command you forthwith to apprehend the said A. O.
 and B. O., and bring them before me or some other of Her Majesty's justices
 of the peace for the said county, to answer the premises and to find sureties
 as well for their personal appearance at the next general quarter sessions
 of the peace, to be holden for the said county, then and there to answer to an
 indictment to be preferred against them by the said A. I. for the said offence, as
 also for their keeping the peace in the meantime towards her said Majesty and all
 her liege people, and especially towards him the said A. I. Hereof fail not, as you
 will answer the contrary at your peril. Given under my hand and seal at
 in the said county, the _____ day of _____ A. D.

(1.) Warrant to apprehend affrayers.

[Commencement as ante, No. 1.] that A. B., on the _____ day of _____ (2.) The like.
 _____, at the parish of _____, in the said county, unlawfully did make an
 affray in a certain public street and highway, there called _____, to the great
 terror and disturbance of Her Majesty's subjects then and there being against the
 peace, &c.

[Commencement as usual, as ante, p. 11.] that on the _____ day of _____, (3.) Commitment
 A. D. _____, at the parish of _____, in the said county, C. D., of _____ for an affray.
 [labourer], E. F., of _____ [labourer], and G. H., of _____ [yeoman], did in
 a tumultuous manner, and with force and arms make an affray, to the terror and
 disturbance of Her Majesty's subjects then and there being [wherein the said A. B.
 was assaulted, beaten, and abused by the said C. D., E. F., and G. H., without
 any just or reasonable cause.] [Conclude as usual, as ante, p. 11.]

— (Venue.) to wit. The Jurors for our Lady the Queen upon their oath pre- (4.) Indictment
 sent, that A. O. and B. O., on the _____ day of _____, in the _____ year of _____ for.
 our Lord [being arrayed and unlawfully assembled together in a tumultuous man-
 ner], did make an affray, to the terror and disturbance of divers of the subjects of
 our said Lady the Queen, then and there being, and to the evil example of all
 others, and against the peace of our said Lady the Queen, her crown and dignity.

Agricultural Gangs.

[30 & 31 Vict. c. 130.]

- I. Regulation of Gang, 62.
- II. Of Licenses, 62.
- III. Withholding of License, 63.
- IV. Penalties, how Recoverable, 63.

FOR the regulation of gangs of agricultural labourers under a gang-
 master, who hire them out on contract with both farmers and others
 for the execution on their lands of various kinds of agricultural work,

1. *Regulation of Gang.* it is enacted by the "Agricultural Gangs Act, 1867," 30 & 31 Vict. c. 130, as follows :—

Definition of terms.

By section 3. "The following words and expressions shall in this Act have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings ; that is to say,

"Child" shall mean a child under the age of thirteen years :

"Young person" shall mean a person of the age of thirteen years, and under the age of eighteen years :

"Woman" shall mean a female of the age of eighteen years or upwards :

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation ; and until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them, shall be deemed to have been hired with the aforesaid view :

"Agricultural gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster."

I. Regulation of Gang.

Regulations as to gangs.

Sect. 4. "The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women :

(1.) No child under the age of eight years shall be employed in any agricultural gang :

(2.) No females shall be employed in the same agricultural gang with males :

(3.) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang :

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed."

II. Of Licenses.

Gangmasters to be licensed.

Sect. 5. "No person shall act as a gangmaster unless he has obtained a license to act as such under this Act.

"Any person acting as a gangmaster without a license under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts."

Licenses not to be granted to keepers of public houses.

Sect. 6. "No license shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor."

Licenses to gangmasters.

Sect. 7. "Licenses to gangmasters shall be granted by two or more justices in divisional petty sessions, on due proof to the satisfaction of such justices that the applicant for a license is of good character, and a fit person to be intrusted with the management of an agricultural gang.

"The justices shall annex to their license a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so

annexed to his license shall for each offence be liable to a penalty not exceeding ten shillings.

Alehouse.

"Any person aggrieved by the refusal of the justices to grant him a license to act as gangmaster may appeal to the next practicable court of general or quarter sessions; and it shall be lawful for such court, if they see cause, to grant a license to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions."

Sect. 8. "Licenses under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original license is granted."

Renewal of licenses.

Sect. 9. "There shall be charged in respect of each grant or renewal of license a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the license are applicable."

Fees in respect of licenses.

III. Withholding License.

Sect. 10. "On any conviction of a gangmaster of any offence against this Act, the justices who convict him shall endorse on his license the fact of such conviction; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his license for a period not exceeding three months; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his license for a period not exceeding two years."

License how affected by conviction of gangmaster.

"And after a fourth conviction for an offence against this Act, the gangmaster shall be disqualified from holding or receiving a license under this Act."

IV. Penalties, how Recoverable.

Sect. 11. "All penalties under this Act may be recovered summarily before two or more justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled 'An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders,' or any Act amending the same."

Recovery of penalties.

11 & 12 Vict. c. 43.

Sect. 12. "This Act shall not apply to Scotland or Ireland."

Extent of Act.

Alehouse.

- I. *What an Alehouse, &c., who may keep it, and where,* 64.
- II. *License for Selling Beer, &c., in Beer Houses not being Inns or Public Houses,* 65.
- III. *License for Selling Wine, Spirits, Beer, &c., in Inns or Public Houses,* 90.
- IV. *Making and Selling Unwholesome Victuals, &c.,* 121.
- V. *Brewing and Selling Unwholesome Beer, &c.,* 121.

1. What an
Alehouse, &c.

- VI. *Wine and Spirit and Ale Measures*, 122.
- VII. *Keeping Disorderly Houses; permitting Drunkenness &c.; Harbouring Thieves, Police, &c.*, 122.
- VIII. *Holding Seditious Meetings*, 124.
- IX. *Closing Doors in Riots*, 124.
- X. *Permitting Gaming, Music, Dancing, &c.*, 124.
- XI. *Drunkenness*, 125.
- XII. *Opening Inns, &c., on Sundays, &c.*, 126.
- XIII. *Quartering of Soldiers*, 130.
- XIV. *The Liabilities of Innkeepers as to receiving Guests, and taking care of Goods*, 130.
- XV. *Of Remuneration, the Tippling Act, and County Courts Act*, 1867, 131.
- XVI. *Forms*, 133.

I. What an Alehouse, &c.; who may keep it, &c. and where.

What an inn, &c. **AN** inn or hostel may be defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with victuals and lodgings, and whatever they reasonably desire, for themselves and their horses, at a reasonable price, while on their way. (See *R. v. Luellin*, 12 *Mod.* 445; *Thompson v. Lacy*, 3 *B. & Ald.* 283.)

A beer house. A beer house or shop is a house in which beer, ale, porter, cider or perry is sold by retail, to be drunk or consumed on the premises.

If an inn uses common selling of ale within the meaning of the recent statutes allowing persons licenses for that purpose, it is then also an alehouse; and if an alehouse lodges and entertains travellers it is also an inn.

A victualling-house. A victualling-house is a house where persons are provided with victuals, but without lodging.

Who may keep one at common law.

At common law, any person may erect or keep an inn to lodge travellers without any license or allowance; (*Morgan v. Palmer*, 2 *B. & C.* 729; *Hutt*, 99; *Dalt.* c. 56;) and it is not an indictable offence to keep an inn without a license; (*Anon.* 3 *Salk.* 25; *Watson's case*, *id.*; *Rex v. Edwards*, 3 *Salk.* 27;) but we shall hereafter see, that where a license is necessary by statute, a restriction is imposed against some persons keeping an inn; and the statute provides a particular punishment. (*Post*, 95.)

Also, by local custom, the right to keep an inn may be confined to particular individuals, as burgesses, &c., and this, notwithstanding the recent statutes. (*Mayor of Leicester v. Burgess*, 5 *B. & Adol.* 246; 2 *N. & M.* 131, *S. C.*)

Inn not a franchise.

It has indeed been laid down in prior editions of this work, citing 1 *Hawk.* c. 32, s. 1, that no man can set up a new inn in a place where there is no manner of need of one, to the hindrance of other ancient and well-governed inns, or keep it in a place in respect of its situation wholly unfit for such a purpose; (and see *Newton v. Trigge*, 3 *Mod.* 329;) this, however, seems an incorrect doctrine, for no place is entitled to this privilege, unless it be of the character of a franchise originating in a grant from the crown. (See 2 *Roll. Ab.* 84, 85.)

At one time a doubt prevailed, whether an inn was not a franchise, but this was denied to be the case in 2 *Roll. Ab.* 84, 85.

There do not appear to be any common law restrictions peculiarly applicable to innkeepers; (*Parker v. Flintt*, *Holt*, 366; *Stevens v. Watson*, 1 *Salk.* 45;) and though it has been said that the keeper of an inn may by the common law be indicted and fined as being guilty of a public nuisance, if he usually harbour thieves or persons of scandalous reputation, or suffer frequent disorders in his house; (1 *Hawk.* c. 32, s. 1;) yet this doctrine would apply to any other person.

It seems, however, an innkeeper might be indicted for taking exorbitant prices. (*Kirkman v. Shattcross*, per Lord *Kenyon*, 6 *T. R.* 17; see *post*, 131.)

2. *License, &c. for, &c.*

No common law restrictions peculiarly applicable to inns.

II. License for the Sale of Beer, &c. by Retail, in Beer Houses (not being Inns or Public Houses).

The statutes by which the sale of beer and cider by retail in *beer houses* and *shops* is now regulated are the 11 Geo. IV. & 1 Will. IV. c. 64; the 4 & 5 Will. IV. c. 85; the 3 & 4 Vict. c. 61; the 11 & 12 Vict. c. 49; and 18 & 19 Vict. c. 118.

The statutes on the subject.

These statutes, it should be remarked, are applicable to such persons as take out an *excise* license for the sale of beer and cider only, by retail, or in other words, they extend to *retail beer-houses*, as distinguished from *inns* or *public houses*. Such persons do not require a *magistrates'* license under the 9 Geo. IV. c. 61, (*post*, 90,) but they are authorised to sell beer and cider (which include ale, porter, and perry) by retail, on taking out an excise license and complying with the provisions of the before-mentioned Acts.

Magistrates' license not necessary.

The keeper of a *common inn*, *alehouse*, or *victualling-house* may procure a license to sell beer and cider as well as wine and spirits by retail under the provisions of the 9 Geo. IV. c. 61, which shall be stated at length in the next section, and need not and does not usually take out a license for that purpose under the above Acts.

Public house keeper need not take out a beer license.

We shall first consider the general provision contained in these Acts, whereby they are to be construed and interpreted, and which have the effect of incorporating and forming them into one code; and we shall then treat of the special provisions in detail, which together constitute the present law by which *beer-houses* are governed.

The general provisions of the statutes on the subject.

By 4 & 5 Will. IV. c. 85, s. 19, every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by *retail*.

What is a retailing of beer, cider, or perry.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 32, reciting that, "In order to remove doubts as to the meaning of certain words in this Act," it is enacted, "that the word 'justice' shall be deemed to mean justice of the peace; and that the word 'person,' and the word 'party,' shall be deemed to include any number of persons and parties; and that the word 'license,' and the word 'day,' and the word 'time,' and the word 'house,' and the word 'place,' shall each be deemed to include any number of licenses, days, times, houses, or places; and that the word 'beer' shall in all cases be deemed to include beer, ale, and porter; and that the word 'cider' shall in all cases be deemed to include cider and perry; and that the word 'county,' and the words 'county or place,' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate;

Rules for interpretation of words.

2. License,
&c. for, &c.

and that the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extra parochial place, or any place maintaining its own poor; and that the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the several words in this Act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only." And by the 4 & 5 Will. IV. c. 85, s. 12, and 3 & 4 Vict. c. 61, s. 20, this clause shall be applicable to the interpretation of words in those Acts respectively.

The 11 Geo. IV. and 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85, to continue in force except as altered by 3 & 4 Vict. c. 61.

Penalties where not otherwise directed, to be recovered under provisions of the former Acts.

Powers, provisions, and penalties of former Acts to apply to persons licensed under this Act.

Appeal.

Acts not to affect the two universities, nor the vintners' company in London.

By the 3 & 4 Vict. c. 61, s. 20, "All the provisions of the said two recited Acts, 11 Geo. IV. & 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85, shall be deemed and taken to be in full force and applicable to this Act, save and except where the provisions of the said first-recited Act are altered by the provisions of the said secondly recited Act, or where the provisions of either of the said two Acts are altered by this Act."

Sect. 19. "All penalties and forfeitures by this Act imposed, except where otherwise specially directed, shall be sued for, recovered, mitigated, and applied in the same manner and by the same means as the penalties imposed by the said recited Acts of the first and fourth and fifth years of the reign of his late Majesty King William the Fourth are directed to be sued for, recovered, mitigated and applied: and all the powers, provisions, authorities, and regulations in the said Acts contained, for the recovery, mitigation, and application of penalties, shall, except where otherwise specially directed, extend to and be put in force, as to penalties imposed by this Act, as fully and effectually as if they were herein repeated and re-enacted.

Sect. 21. "All the powers, regulations, proceedings, forms, penalties, forfeitures, enactments, and provisions contained in the said recited Acts, or in either of them, with reference to persons licensed under either of the said Acts, and to the offences committed by such persons against either of the said Acts, or against the tenor of any license granted under the said Acts, and also with reference to the sureties of such persons, and to persons doing the things thereby prohibited without the license required by the said Acts or either of them, shall (except where they are altered by this Act, or are repugnant thereto) be deemed and taken to be applicable to all persons licensed under this Act, and to all offences committed by such persons of the same description as the offences mentioned in the said Acts, and to the sureties of all such persons in respect of such offences, and to all persons doing, without the license required by this Act, things of the same description as the things prohibited without the license required by the said recited Acts, as fully and effectually as if all the said powers, regulations, proceedings, forms, penalties, forfeitures, enactments, and provisions had been repeated and re-enacted in this Act, with reference to persons licensed under this Act, and to the sureties of such persons, and to persons acting without the license required by this Act; and also that all the powers, regulations, and provisions in the said Acts contained, authorising any party convicted to appeal to the general session or quarter session of the peace against any conviction under the said Acts, shall also extend and apply to any convictions under this Act." The 4 & 5 Will. IV. c. 85, s. 11, contains a similar clause to this, enacting in like manner that the provisions of the 1 Will. IV. c. 64, shall apply to persons licensed under that Act.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 29, "Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said universities, and their successors, or in the master, wardens, freemen, and commonalty of the

vinters of the city of London, but not to extend to those freemen of the said company of vinters who have obtained the same by redemption only; nor in any way to affect any license to the keeper of any inn, alehouse, or victualling-house, unless in so far as relates to the sale of beer by retail.

The 3 & 4 Vict. c. 61, s. 22, contains a similar exemption of the above universities from that Act; and see *Reg. v. Archdall*, 8 A. & E. 281, where the right of Cambridge University to grant alehouse licenses was considered at length.

2. *License, &c. for, &c.*

Nor to affect any license to the keeper of an inn, &c.

SELLING BEER, &C., IN BOOTHS, &C., AT FAIRS OR RACES.

Persons were not prohibited from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair by anything in the 11 Geo. IV. & 1 Will. IV. c. 64, so long as such person continue to do so in the same manner as he was authorised to do before the passing of that Act (s. 29), but this exemption of persons selling beer in booths or places at fairs or races is taken away by the 25 Vict. c. 22, s. 12, by which it is enacted, that "so much of any Act as permits the sale of beer, spirits, or wine, at fairs or races, without an excise license, shall be and the same is hereby repealed." A person who sold beer in a place within, and during a mop or fair held by virtue of an ancient custom or charter, and, therefore, exempted from the operation of the 11 Geo. IV. and 1 Will. IV. c. 64, by the clause in the 29th section thereof, was held to sell beer by permission of that Act, which permission was revoked by the 25 Vict. c. 22, s. 12. (*Huxham v. Wheeler*, 33 L. J. M. C. 153.)

But by the 26 & 27 Vict. c. 33, s. 21, nothing in the 25 & 26 Vict. c. 22, s. 12, contained, "shall extend to prohibit any person, duly licensed by the excise, to retail beer, spirits, or wine, as in the 11th section of the Act 6 Geo. IV. c. 81 is mentioned, from carrying on his trade or business, for which he shall be so licensed, in booths, tents, or other places, at the time and place, and within the limits of holding any lawful or accustomed fair, by virtue of any law or statute in that behalf, or any public races, in like manner as such person might lawfully have done under the said last-mentioned Act, if the said Act of 25 & 26 Vict. c. 22, had not been passed."

By the 27 & 28 Vict. c. 18, s. 5, any person who shall have taken out an excise license under 4 & 5 Will. IV. c. 85, to retail beer to be drunk on the premises, may obtain an occasional license to retail beer at other places and times not exceeding three days, besides those mentioned in his license; see tit. "*Excise*," Vol. II.

Occasional licenses.

We will now proceed to notice the remaining provisions of these Acts, which may be conveniently arranged and considered under the following titles:—

Division of subject.

1. *Who may take out the License*, 68.
2. *Proceedings to obtain License—Form of Application—Certificate of Occupation and Character*, 70.
3. *License, by whom, and how granted—Form, duration of, and Entry of, and Entry of Premises with Excise*, 74.
4. *Continuance of License on Death of Licensee*, 76.
5. *License, when it becomes void and forfeited*, 77.
6. *Management and Regulation of Licensed Houses*, 78.
 - (a) *Descriptive Board to be put on Houses*, 78.
 - (b) *Hours for Opening and Closing Houses*, 78.

2. *License, &c for, &c.*

- (c) *Standard Measures to be Used*, 80.
- (d) *Officers of Excise and Constables, when Authorised to enter Licensed Houses—License to be produced before Magistrates, if required*, 80.
- (e) *Permitting Drunkenness, or other disorderly conduct, &c. in Licensed House—Adulterating Beer*, 81.
- 7. *Penalties for selling Beer, Cider, &c., without License*, 82.
- 8. *Penalties for Persons Licensed to sell Beer, selling or having in their possession Wines, Spirits, or Sweets, &c.*, 84.
- 9. *Proceedings for the Recovery of Penalties*, 84.
 - (a) *What Justices may act*, 84.
 - (b) *Summons or Order, how served*, 85.
 - (c) *Information, how and by whom exhibited*, 85.
 - (d) *Evidence and Witnesses*, 86.
 - (e) *Proceedings before Justices, Mitigation of Penalties, and Conviction*, 86.
- 10. *Certiorari, Appeal, and Costs of Appeal*, 87.
- 11. *Penalties, how levied and enforced*, 89.
- 12. *Actions against Justices, &c.* 90.

(1.) WHO MAY TAKE OUT THE LICENSE.

All persons licensed may sell beer by retail.

By statute 11 Geo. IV. & 1 Will. IV. c. 64, intituled, "*An Act to permit the general Sale of Beer and Cider by Retail in England*," reciting, by s. 1, "That it is expedient, for the better supplying the public with beer in England, to give greater facilities for the sale thereof than are at present afforded by licenses to keepers of inns, alehouses, and victualing houses," it is enacted, "That from and after the 10th day of October, 1830, it shall and may be lawful for *any and every person* who shall obtain a license for that purpose under the provisions of this Act, to sell beer, ale, and porter by retail [and also cider and perry, s. 30] in any part of England, *in any house or premises* specified in such license; any thing in any Act or Acts heretofore made or in force at the time of the passing of this Act to the contrary in anywise notwithstanding."

The enactment, though it enables any person to obtain the license, does not supersede the custom of a borough, that no person shall carry on the trade of an alehouse therein who is not a burgess. (*Mayor, &c. of Leicester v. Burgess*, 2 Nev. & Man. 131; 5 B. & Adol. 246, S. C.)

Not to be granted to sheriff's officer or non-householder.

By section 2, no license shall be granted to any person being a sheriff's officer, or officer executing the legal process of any court of justice, nor to any person not being a householder assessed to the poor rates in the parish or place in which he shall be licensed to sell beer by retail, and that any license granted to any such person shall be void to all intents and purposes.

Sect. 7 prohibits any person from selling any beer by retail without a license under the provisions of this Act, after the expiration of any license granted under that Act, or in any house not specified in such license, see *post*, 75.

License to retail beer not to be granted to any but the real resident occupier, nor in respect of any house rated at less than 15*l.* per annum within

By the 3 & 4 Vict. c. 61, s. 1 [7th August, 1840], reciting the 11 Geo. IV. & 1 Will. IV. c. 64, and the 4 & 5 Will. IV. c. 85, and that it was expedient to alter and amend the said Acts, it is enacted, "That no license to sell beer or cider by retail under the said recited Acts or this Act shall be granted to any person who shall not be the real resident holder and occupier of the dwelling-house in which he shall apply

to be licensed, nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of fifteen pounds per annum at the least if situated in the cities of London or Westminster, or within any parish or place within the bills of mortality, or within any city, cinque-port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed ten thousand, or within one mile, to be measured by the nearest public street or path, from any polling-place used at the last election for any town having the like population, and returning a member or members of parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of eleven pounds per annum, if situated within any city, cinque-port, town corporate, parish, or place, the population of which, according to such last parliamentary census, shall exceed two thousand five hundred, and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of parliament; nor shall any such license be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid; and every license granted contrary hereto shall be null and void."

By the 24 & 25 Vict. c. 21, s. 3, it is enacted that "it shall be lawful for any person to take out a license for the sale in any house or shop of table beer, at the price not exceeding the rate of $1\frac{1}{2}d.$ the quart, and not to be drunk or consumed on the premises where sold; and it shall not be necessary to the obtaining of such license that the said house or shop shall be rated to the relief of the poor to any amount, or that the person applying for such license shall produce any certificate or enter into any bond required by any Act relative to the sale of beer by retail." Before this Act it had been decided in *Read v. Storey*, 30 L. J. M. C. 110, that a license for the sale of table beer at or under the price of $1\frac{1}{2}d.$ a quart was necessary.

By 26 & 27 Vict. c. 33, s. 1, any person who in England or Ireland shall have taken out an excise license to sell strong beer in casks containing not less than $4\frac{1}{2}$ gallons, or in not less than two dozen reputed quart bottles at one time to be drunk or consumed elsewhere than on the premises, may take out an additional license on payment of the excise duty of one pound one shilling and five pound per cent. thereon; and the same shall authorise such person to sell beer in any less quantity and in any other manner than as aforesaid, but not to be drunk or consumed on the premises when sold; and such additional license shall be granted without the production of any certificate or the possession of any other qualification than the license herein just mentioned.

By 3 & 4 Vict. c. 61, s. 18, "nothing in this Act contained shall prevent any person from obtaining, at the expiration of his existing license, a renewed license in respect of any house in which he shall at the time of the passing of this Act be duly licensed to retail beer or cider under the said recited Acts or either of them, notwithstanding such house may not be of the rent or annual value by this Act prescribed, nor to oblige such person to produce any other certificate (where a certificate is required) for obtaining his license than the certificate required by the said recited Acts; but it shall be lawful for the officers of excise duly authorised to grant licenses to renew and continue to grant licenses

2. License, &c. for, &c.

the bills of mortality, or in cities, towns, &c. containing 10,000 inhabitants;

nor less than 11*l.* per annum in places exceeding 2,500 inhabitants;

nor less than 8*l.* per annum in other places.

License for the sale of beer not exceeding $1\frac{1}{2}d.$ a quart may be granted to a house not rated, and without any certificate or bond.

Persons licensed to sell strong beer in casks of $4\frac{1}{2}$ gallons or two dozen quart bottles may take out an additional license to sell beer without further qualification.

Licenses may be granted to persons licensed before the passing of the Act, whilst they continue the occupiers of the same house, although it is below the qualification.

2. *License, &c. for, &c.*

Persons using or obtaining false certificates, disqualified.

Persons convicted of felony, or of selling spirits without license, disqualified. Persons guilty of a third offence against the tenor of their license, cannot take out license for two years.

Persons convicted twice of refusing to admit constable, disqualified.

Persons disabled by conviction from keeping an inn, &c. not entitled to take out beer license.

Penalty.

Evidence.

Clerk of Peace to deliver copy of conviction or a certificate to collector of excise.

Penalty.

to such person (being in other respects properly qualified) on the production of such certificate as last aforesaid, so long as such person shall continue to be the resident holder and occupier of the same house, any thing in this Act to the contrary notwithstanding."

Sect. 6. "Every person convicted who shall forge any certificate, or make use of any certificate knowing it to be forged, or the matters therein certified to be false, in order to obtain a license or enable any other person to obtain it, shall be disqualified from obtaining any license," *post*, 74, 77. The 4 & 5 Will. IV. c. 25, s. 8, (*post*, 72,) contains a similar provision.

Sect. 7. "Every person who shall be lawfully convicted of felony, or of selling spirits without license, shall be disqualified from obtaining a license to sell beer and cider by retail," *post*, 77.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 13, (*post*, 81,) persons convicted of a third offence against the tenor of their license, and whose license shall therefore have been adjudged void, may be adjudged by the justices incapable of taking out another license for two years, to be computed from such adjudication, and by s. 16, (*post*, 87,) the court of quarter sessions on appeal may disqualify for a similar period for a like offence.

And by 4 & 5 Will. IV. c. 85, s. 7 (*post*, 80), persons convicted for the second time of refusing to admit a constable into his house, shall, if the justices so adjudge, be disqualified from selling beer for the space of two years next after such conviction, or for such shorter space as they may think proper.

The 6 Geo. IV. c. 81, s. 22, precludes persons disabled by conviction from keeping a common inn, &c., from retailing beer, cider, or perry, under any excise license. The enactment is as follows:—"That all and every person or persons who shall be disabled by any conviction from holding or having a license to keep or from keeping a common inn, alehouse, or victualling-house, shall also by such conviction be disabled from taking out and from having any excise license to sell and from selling beer, cider, or perry by retail, in any manner whatsoever, under any excise license or licenses obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any excise license or licenses for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cider or perry by retail in any manner whatsoever, shall incur the penalty for so doing without license; and in all such cases in the prosecution for the recovery of such penalty, a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall, on the trial in such prosecution, be legal evidence thereof, which certificate such clerk of the peace, or person acting as such, is hereby authorised and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of excise, or other person or persons authorised to grant excise licenses within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand no fee or reward whatsoever, and if any such clerk of the peace, or person acting as such as aforesaid, shall neglect or omit to deliver such certificate as aforesaid, he shall for every such offence forfeit the sum of ten pounds."

(2.) PROCEEDINGS TO OBTAIN LICENSE—FORM OF APPLICATION—CERTIFICATE OF OCCUPATION AND CHARACTER, &c.

Form of application for.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 2, "in every application for such license there shall be specified, set forth, and inserted the Chris-

tian name and surname of the party applying for such license, and a description of the house or premises in which beer, ale, and porter is intended to be sold by retail by such person, together with the Christian names and surnames, and the occupation and residence of the person or persons who shall be proposed as surety or sureties for the party so to be licensed."

But by 30 & 31 Vict. c. 90, s. 13, "Sections four and five of the Act passed in the first year of the reign of King William the Fourth, chapter sixty-four, relating to bonds to be entered into by persons requiring licenses to retail beer under that Act, are hereby repealed."

By 4 & 5 Will. IV. c. 85, reciting that much evil has arisen from the management and conduct of houses in which beer and cider is sold by retail, under the 11 Geo. IV. & 1 Will. IV. c. 64, and that it is expedient to amend the provisions of that Act in certain particulars, sect. 1 enacts, "That from and after the commencement of this Act it shall be lawful for the commissioners of excise, or other persons duly authorised to grant licenses for the sale of beer, porter, cider, or perry, under the provisions of the said recited Act, to *any person* applying for the same, but that such license shall not authorise the person obtaining it to sell beer or cider to be drunk or consumed *in the house or upon the premises* specified in the same license, *unless the same be granted upon the certificate hereinafter required*."

Sect. 2. "Every person applying for a license to sell beer or cider by retail, intending the same *to be drunk in the house or on the premises*, shall (*in addition to the application setting forth the particulars required by the said recited Act*) *annually* produce to and deposit with the commissioners of excise, collector, supervisor, or other person authorised to grant such license within the parish, township, or place in which the person so applying intends to sell beer or cider by retail, *a certificate signed by six persons* residing in and being and describing themselves to be inhabitants of such parish, township, or place, and respectively rated therein to the poor at not less than six pounds, or occupying a house therein rated to the poor at not less than six pounds, (none of whom shall be maltsters, common brewers, or persons licensed to sell spirituous liquors or beer or cider by retail, nor owners or proprietors of any house or houses licensed to sell such liquors or beer or cider by retail,) stating that the person applying for the license is of good character, and that at the foot of such certificate *one of the overseers* of the parish, township, or place shall certify (if the fact be so) that such six persons are inhabitants respectively rated as aforesaid; and such certificate and license shall respectively be in the forms of the schedule annexed to this Act. (See form No. 5, *post*, p. 135.) Provided always, that in any parish, township, or district maintaining its own poor in which there are not ten inhabitants rated to the relief of the poor to the amount of six pounds each, or not occupying houses respectively rated to the poor at six pounds each, (not being maltsters, common brewers, or persons licensed to sell spirituous liquors or beer or cider by retail,) the *certificate of the majority of such inhabitants* of such parish, township, or district maintaining its own poor, as are rated to the amount of six pounds each, shall be deemed to be a sufficient certificate for the purposes of this Act."

Where a person obtained a certificate of character from six of his neighbours, presented it to the officer of excise for the purpose of obtaining a license, and obtained such license, and was afterwards informed against and convicted before justices, for using a false certificate knowing it to be false, upon proof that he had for some years previously cohabited with a woman without marrying her, and been seen drunk, the conviction was quashed by the Court of Common Pleas upon a case stated under the 20 & 21 Vict. c. 43, upon the ground that upon such evidence the justices were not compelled to conclude that the certificate was false. (*Leader v. Yell*, 33 L. J. M. C. 231; 16 C. B. N. S. 584.)

2. License, &c. for, &c.

Sects. 4 & 5 of 1 Will. IV. c. 64, relating to beer retailer's bonds, repealed.

Licenses to be granted for sale of beer, but not to authorise consumption thereof on the premises unless granted upon certificate of character.

Every person applying for a license to sell beer *to be drunk on the premises* to deposit with the commissioners of excise a certificate of good character signed by six rated inhabitants of the parish, &c. and certified by one of the overseers.

If not ten rated inhabitants in the place the certificate of the majority of them.

2. License, &c. for, &c.

Penalty on overseers refusing to certify as required.

Penalty for making or using false certificates.

Licenses obtained on false certificates to be void.

Persons obtaining it to be afterwards disqualified from obtaining a license.

The certificate in extra-parochial places may be signed by inhabitants of adjoining parish.

Certificate not to be required for houses in certain situations if population exceed 5000.

Applicant to produce a certificate of his being the real resident occupier of the house, and of the amount at which it is rated (a).

Sect. 3. "If any overseer of any parish, township, or place shall, after application made to him by or on behalf of the person applying for the license required by this Act, refuse or neglect to certify (if the fact be so) that the persons who have signed such certificate (*as required by this Act, ante, 71*) are inhabitants rated respectively as aforesaid, he shall forfeit and pay any sum of money not exceeding five pounds, to be recovered before any justice of the peace acting for the county in which such parish, township, or place shall be situate, on complaint of the person by whom the application shall have been made, unless such overseer of the poor shall show to the satisfaction of such justice reasonable cause for such neglect or refusal."

Sect. 8. "If any person shall, in any certificate required by this Act, (*ante, 71*), certify any matter as true, knowing the same to be false, or shall make use of any certificate for the purposes of this Act, knowing such certificate to be forged, or the matters certified therein to be false, every such person shall, on conviction of such offence before two or more justices of the peace, forfeit and pay the sum of twenty pounds; and every license for the sale of beer or cider by retail which shall be granted to any person who shall have made use of any such certificate in order to obtain the same, such person knowing such certificate to be forged, or the matters certified therein to be false, shall be void to all intents and purposes; and any person who shall have made use of such certificate shall for ever hereafter be disqualified from obtaining a license to sell beer or cider by retail under the provisions of the said recited Act or this Act."

A conviction under sect. 8 of this Act, for making a false certificate, is properly drawn if it follows the directions of the 11 & 12 Vict. c. 43, for the information or complaint for that offence is not within the exception of any "information, &c., under or by virtue of any of the statutes relating to Her Majesty's revenue of excise," contained in section 35 of the latter Act. (*Reg. v. Bakewell, 26 L. J. M. C. 150; 7 E. & B. 848, S.C.*)

Sect. 9. "No license for the sale of beer or cider by retail to be consumed or drank in the house or on the premises shall be granted, except upon the certificate hereby required: provided always, that in all extra parochial places the certificate required by this Act may be signed and given by the inhabitants rated to the poor at six pounds in any adjoining parish or parishes."

Sect. 21. "Provided always, that such certificate shall not be required as to any house situated within the cities of London and Westminster, or within any parish or place within the bills of mortality, nor within any city or town corporate, nor within the distance of one mile from the place used at the last election as the place of election or polling place of any town returning a member or members to parliament, provided that the population, to be determined according to the last parliamentary census that shall have been taken, in such city, town corporate, or town returning a member or members to parliament, shall exceed five thousand."

By 3 & 4 Vict. c. 61, s. 2, "Every person who shall apply to be licensed to retail beer or cider shall produce to the proper officer of excise authorised to grant such licenses a certificate in writing from an overseer of the township, parish, or place in which he shall reside, certifying that such applicant is the real resident, holder, and occupier of the said house, and also certifying the true rent or annual value at which such house, with the premises occupied therewith, is rated in one rating to the poor rates, according to the last sum or rate made and allowed in such township, parish, or place for the relief of the

(a) This enactment does not require the certificate of *value* in all cases, but only for persons not licensed on 7th Oct., 1841: see sect. 18, *ante*, 69. The

certificate of *character* is still required in all cases not excepted in the 4 & 5 Will. IV. c. 85, s. 21.

poor; and every such certificate shall be deposited and left with the proper officer of excise by whom such license shall be granted; and a duplicate thereof shall be deposited and left with the clerk of the peace for the county, riding, or city, within which such township, parish, or place is situate."

No certificate is now required for a license to sell table beer at a price not exceeding $1\frac{1}{2}d.$ the quart to be consumed off the premises; see 24 & 25 Vict. c. 21, s. 3, *ante*, p. 69, and no certificate is required from a person who takes out only an additional license under 26 & 27 Vict. c. 33, s. 1. (*Ibid.*)

The 2nd section of 3 & 4 Vict. c. 61, is in the nature of a direction and not of a condition precedent; a license, therefore, is not void on the ground of the want of an overseer's certificate that the person licensed is the real resident, holder, and occupier of the house, though by the 1st section it would be void if in fact the licensee were not the real resident, holder, and occupier. (*Thompson v. Harvey*, 28 L. J. M. C. 163; 4 H. & N. 254, S. C.) An overseer has no arbitrary discretion as to certifying, and he must give a certificate according to the result of a proper inquiry into the facts which it is his duty to make, and if he refuse to make such inquiry he will be compelled by mandamus to do so; (*Reg. v. Overseers of Wittingham*, 2 C. L. R. 1660;) but after bonâ fide satisfying himself as to the truth or falsehood of the facts he may grant or withhold his certificate accordingly, and he cannot be compelled by mandamus to certify against the conclusion of his own mind or means of knowledge; (*Reg. v. Kensington*, 12 Q. B. 654; 17 L. J. M. C. 332;) but overseers have no right to refuse such certificate because they think there are too many public houses, or that a beer shop is not required in the place in question. (*Reg. v. Overseers of Wittingham*, *ubi sup.*)

And if a collector or supervisor of excise grant a license for the sale of beer without the production of a certificate of an overseer under the 3 & 4 Vict. c. 61, s. 2, the license cannot be removed by certiorari on the ground that it is not a judicial act. (*Reg. v. Salford Overseers*, 21 L. J. M. C. 223; 18 Q. B. 687, S. C.)

Costs of a mandamus to overseers to inquire are in the discretion of the court, and will in general be given to the successful party. But if it appears upon the return to a mandamus to the overseers to inquire into the facts for the purpose of certifying that upon inquiry they have not been able to ascertain whether the applicant was occupier at the time of the application made to them, but that he was on the occasion of a previous application not the occupier, and that they had no notice of a change of occupancy up to the time of the latter application to them, but that, at the time of the return, he was occupier, and they had accordingly given him their certificate of that fact with which he was satisfied, the applicant will not be deemed a successful party so as to entitle him to costs, because he appeared partly to blame at first. (*Reg. v. Langridge*, 24 L. J. Q. B. 73.)

Sect. 3. "That when any person shall become the occupier of a house newly erected, and not yet rated, and shall be desirous of taking out a license to retail therein beer and cider before the making of a new rate, it shall be lawful for the proper officer of excise, if the applicant shall in other respects be duly qualified, to grant such license, on the certificate of the overseer of the poor certifying the rent or annual value to be not less than that at which such house, with the premises occupied therewith, will be rated in one sum to the relief of the poor in the next rate to be made and allowed, and certifying also that the applicant has claimed to be rated in respect of the said house and premises."

Sect. 4, reciting that "in some extra parochial places no assessments are made or rates collected for the relief of the poor, and it is expedient to provide for persons obtaining licenses in such places," enacts, "That in any extra-parochial or other place where no rates are

2. License, &c. for, &c.

Certificate to be left with officer of excise, &c.

Of the certificate.

Mandamus to overseers to inquire.

The granting of a license by the excise is not a judicial act, and therefore cannot be removed by certiorari. Costs of mandamus to overseers.

Provision for new houses occupied since a rate was made.

In extra-parochial places licenses may be granted on the certificate of two inhabitant-householders of the required annual value.

2. License,
&c. for, &c.

made or collected for the relief of the poor, it shall be lawful for the proper officers of excise authorised to grant licenses to grant a license to any person to retail beer or cider in a dwelling-house, which, with premises occupied therewith, shall be of the real rent or annual value of fifteen pounds, eleven pounds, or eight pounds respectively, according to the situation thereof as aforesaid; and in such case the person applying for such license shall produce to and deposit and leave with the proper officer of excise granting such license a certificate in writing, signed by two inhabitant householders of the township or place, certifying that the party applying is the real resident in and occupier of the dwelling house sought to be licensed, and also certifying the true and real annual value of the same, with the premises occupied therewith, according to the best of their judgment and belief."

Penalty on overseers refusing to grant certificates, and on overseers and other persons granting false certificates.

Sect. 5. "Every overseer of the poor who shall refuse to grant a certificate of the rating or assessment of any rated house and premises, when demanded, or of any person having claimed to be rated in respect of any newly erected house not yet rated, or who shall falsely certify any house to be rated when the same was not duly rated at the time of the making and allowance of the last rate made and allowed for the relief of the poor, and every overseer or other person who shall falsely certify any person to be the real resident, holder, and occupier of any house, contrary to the fact, or falsely certify the rent or annual value at which any dwelling-house and premises shall now or will be rated, or the rent paid for the same, or the annual value thereof, or shall grant any certificate which shall in any other respect be wilfully false, shall forfeit twenty pounds."

Penalty on forging certificates, or using false certificates.

Sect. 6. "That every person who shall, for the purpose of obtaining for himself or enabling any other person to obtain a license to retail beer or cider, forge or counterfeit any certificate, or shall produce or make use of any certificate, knowing the same to be forged or counterfeit, or the matters certified therein or any of them to be false, shall forfeit fifty pounds; and every license for the retail of beer or cider obtained by any person on any such forged, counterfeit, or false certificate shall, on the conviction of such person, be void to all intents and purposes, and shall be so adjudged; and every person who shall be convicted of any of the said offences, shall be disqualified from obtaining any license under the said recited Acts or this Act to retail beer or cider either to be drunk and consumed on the premises or off the premises.

Licenses obtained by false certificates to be void, and the persons obtaining them disqualified.

The jurisdiction to convict of offences within this section of using a false certificate relative to the annual value of a house occupied by him, in respect of which he was anxious to obtain a license to retail beer, is in the two justices having jurisdiction in the place where the user took place, and thereby the offence committed, and not in the justices of the division or place where the house as to which the license was granted was kept or situated—under the 3 & 4 Vict. c. 61; 11 Geo. IV. and 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85. (*Reg. v. Waghorn*, 22 L. J. M. C. 60; 1 E. & B. 647.) In that case the offence was committed at Maidstone, and within the borough within which the magistrates of the same have exclusive jurisdiction, and the matter falsely certified related to a house in a parish in the county of Kent, and the conviction made by the magistrates of the county acting in the division within which that parish lay was quashed.

(3.) LICENSE, BY WHOM AND HOW GRANTED—FORM, DURATION, AND ENTRY OF—ENTRY OF PREMISES WITH EXCISE.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 2, "Any and every such license which shall be taken out within the limits of the chief office of excise in London shall be granted under the hands and seals of two or

By whom to be granted in London.

more of the *commissioners of excise* for the time being, or of such persons as they the said commissioners of excise, or the major part of them for the time being, shall from time to time authorise, employ, or direct for that purpose; and any and every such license which shall be taken out in any part of England, *not within the said limits*, shall be granted under the respective hands and seals of the several *collectors and supervisors* of excise within their respective collections and districts: and it shall be lawful for the said commissioners of excise, or any two or more of them respectively, and for the person to be authorised, employed, or directed by the said commissioners or the major part of them, and also for all such collectors and supervisors, and they are hereby respectively authorised and required, within ten days after the application shall have been made for the same, to grant such license to the persons who shall apply for the same; the person so applying first paying for such license a duty of two pounds two shillings, to be applied and accounted for as hereafter mentioned." [Which duty is likewise now regulated by the 4 & 5 Will. IV. c. 85.] "And every such license shall be according to the form in the schedule annexed to this Act, (*post*.) and shall be duly registered in the proper department of the excise; provided always, that no such license shall authorise or entitle the party licensed to receive any license to sell or retail wine or spirits, any thing in any Act or Acts of Parliament to the contrary thereof notwithstanding: [or, by 4 & 5 Will. IV. c. 85, s. 15, sweets or made wines, or meed, or metheglin:] and a list or register of every license so granted, specifying the name and place of abode of every person licensed, and the name and description of the house mentioned in such license, shall be kept at the excise office with respect to all licenses granted by the commissioners of excise or any person authorised by them, and at the office or dwelling house of every collector and supervisor of excise in their and his respective collections and districts: and such list or register shall at all times be produced to and shall be open to the inspection and perusal of any magistrate of the county or place where such license shall be granted, and where such house shall be situate; and a copy of such list or register shall once in every calendar month be transmitted by every such collector or supervisor to the clerk of the magistrates for the district in which such license shall be granted; and any copy of or extract from such list or register, which shall or may be at any time required by the clerk to the magistrates, shall be given to him by such collector or supervisor whenever thereto required." The schedule to the Act gives the form of the license, which see *post*, 134, Nos. 4, 6.

By 24 & 25 Vict. c. 91, s. 14, "Every license taken out under the 1 Will. IV. c. 64; 4 & 5 Will. IV. c. 85, and 3 & 4 Vict. c. 61, on and after the 11th day of October, 1861, shall be in force from the day of the date of such license until the 10th of October next following the granting thereof, and every person who shall after the said 10th of October, take out a license under the said Acts, for the first time, shall be entitled to the same on payment of a proportionate part of the duty thereon, in the same manner as a person commencing a trade or business, for which an excise license is required, may now take out a license under the provisions contained in the 17th section of the Act 6 Geo. IV. c. 81."

Formerly the applicant had to enter into a bond with sureties, but the necessity for a bond is done away with by 30 & 31 Vict. c. 90, s. 13.

Sect. 7. "No person shall sell any beer by retail under the provisions of this Act at any time after the expiration of any license granted under this Act, nor in any house or place not specified in such license; provided always, that it shall be lawful for any persons so licensed to take out a fresh retail license for the selling beer by retail before the expiration of any former retail license, and so from year to year."

Sect. 10. "Persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one license in

2. License,
&c. for, &c.

Elsewhere in
England

When to be
granted.

Form of license.

Not to authorise
sale of wine, &c.

Register of
license.
Inspection of
license by
magistrate.

When to be in
force.

Bond abolished.

Not to sell beer
after expiration
of license.

License may be
renewed.

Partners in one
house to take out
but one license.

2. License, &c. for, &c.

License not to extend to any other house.

Licenses to retail cider and perry may be granted under the same regulations as those for sale of beer, &c.

Provisions, &c. of Act to apply to sale of cider.

Duty, 1l. 1s. on license for sale of cider or perry.

Persons licensed to retail beer may also retail cider; but not *vice versa*.

Such licenses to state particulars.

Persons licensed to make entry of premises with the excise.

any one year, for selling any beer by retail under the provisions of this Act: provided also, that no one license which shall be granted by virtue of this Act shall authorise or empower any person or persons to sell any beer, ale or porter, under the provisions of this Act, in any house or place other than the house or place mentioned in such license for selling beer, ale, and porter by retail, under the provisions of this Act, and in respect whereof such license shall be granted."

Subject to the above provisions, the sale of *cider and perry* is regulated by 11 Geo. IV. & 1 Will. IV. c. 64, s. 30, which, after reciting that "it is expedient that the sale of cider and perry by retail should be licensed in like manner and should be subject to the like regulations as the sale of beer," enacts, "That from and after the tenth day of October, one thousand eight hundred and thirty, it shall be lawful for any person desirous of selling cider and perry by retail to apply for and to obtain an excise license for that purpose, under the same regulations in all respects (except as hereinbefore is otherwise provided) as are in this Act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose; and that all the clauses, regulations and provisions in this Act contained relating to the sale of beer by retail, and to the licenses for selling the same, and to the sureties for the parties licensed, and to the conduct of the parties licensed, and to all other matters whatever respecting the selling of beer by retail, and the retailers thereof, and the licenses for the same, and the houses where the same are sold, and the penalties against the parties licensed, shall be taken and deemed to be applicable to the sale of cider and perry by retail, and to licenses for the same, and to the sellers of cider and perry by retail, as if cider and perry, and the retailers thereof, were expressly mentioned and specified in and throughout this Act: provided always, that the person receiving a license for selling cider or perry by retail shall pay for such license a duty of one pound one shilling and no more, instead of the duty of two pounds two shillings hereinbefore mentioned, and which said duty of one pound one shilling shall be applied in like manner as the said duty of two pounds two shillings is hereinbefore directed to be applied; and every such license shall be according to the form in the schedule annexed to this Act: provided also, that any person licensed under this Act to sell beer by retail may sell also cider and perry by retail without receiving a separate license for that purpose; but that no person licensed to sell cider and perry by retail, and paying for such license, as herein provided, the sum of one pound and one shilling, shall be at liberty to sell beer by retail." (See "*Excise*," Vol. II.)

And by the 4 & 5 Will. IV. c. 85, s. 15, it is provided that "in every such license shall be specified whether the same is granted for the sale of cider and perry by retail to be drunk or consumed not in or upon the house or premises where sold, or for the retail of cider and perry to be drunk and consumed in or upon the house and premises where sold."

By the 3 & 4 Vict. c. 61, s. 9, "Every person whatever licensed to retail beer or cider under the said recited Act or this Act shall, in manner directed by the 7 & 8 Geo. IV. c. 53, and 4 & 5 Will. IV. c. 51, make entry with the officers of excise of every house, cellar, room, and place for storing, keeping or retailing beer or cider, on pain of forfeiting the penalties imposed by the said last-mentioned Act for making use of any unentered room or place; and all beer and cider found in any such unentered house, cellar, room, or place shall be forfeited." (See "*Excise*," Vol. II.)

(4.) CONTINUATION OF LICENSE ON DEATH OF LICENSEE.

By the 3 & 4 Vict. c. 61, s. 8, "Upon the death of any person whatever licensed to retail beer or cider under the said recited Acts or this

On death of licensee, his executors or

Act before the expiration of the license, it shall be lawful for the person authorised to grant licenses to authorise and empower, by endorsement or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the widow or child, of such deceased person, who shall be possessed of and occupy the dwelling-house and premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the residue of the term for which such license was originally granted, without taking out any fresh license, or payment of any additional duty thereon; and also at the expiration of such license (in case the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new license to such executors, administrators, or widow, on payment of the proper license duty."

2. License, &c. for, &c.

widow or child,
may be authorised
to sell for
remainder of
term of license

The necessity for a bond is now got rid of, 30 & 31 Vict. c. 90, s. 13.

(5.) LICENSE, WHEN IT BECOMES VOID OR FORFEITED.

By the 3 & 4 Vict. c. 61, s. 6, "Every person who shall, for the purpose of obtaining for himself or enabling any other person to obtain a license to retail beer or cider, forge or counterfeit any certificate, or shall produce or make use of any certificate, knowing the same to be forged or counterfeit, or the matters certified therein or any of them to be false, shall forfeit fifty pounds; and every license for the retail of beer or cider obtained by any person, on any forged, counterfeit, or false certificate, shall, on the conviction of such person, be void to all intents and purposes, and shall be so adjudged; and every person who shall be convicted of any of the said offences shall be disqualified from obtaining any license under the said recited Acts, or this Act, to retail beer or cider either to be drunk and consumed on the premises or off the premises."

Penalty on
forging certi-
ficates, or using
false certificates
as to residence
and value of
house.
Licenses obtained
by false certi-
ficates to be void,
and the persons
obtaining them
disqualified.

By the 4 & 5 Will. IV. c. 85, s. 8, "Every license for the sale of beer or cider by retail which shall be granted to any person who shall have made use of any such certificate as required by that Act, in order to obtain the same, such person knowing such certificate to be forged or the matters therein certified to be false, shall be void to all intents and purposes." See *ante*, p. 72, as to the penalty.

Using false
certificate of
character.

By 3 & 4 Vict. c. 61, s. 7, "Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without license, shall for ever thereafter be disqualified from selling beer and cider by retail, and no license to sell beer and cider by retail under the said recited Acts or this Act shall be granted to any person who shall be so convicted as aforesaid; and if any such person shall, after having been so convicted as aforesaid, take out or have any license to sell beer or cider by retail under the said recited Acts or this Act, the same shall be void to all intents and purposes, and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without license, and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof."

Licenses to be
void on conviction
of felony or of
selling spirits
without license.

Section 10 enacts, "That on conviction of any such person licensed to retail beer or cider in any penalty for having wine or spirits or sweets in his possession, or for selling or retailing wine or spirits or sweets, the license of such person for retailing beer or cider shall become null and void, and shall be so adjudged."

Certificate from
clerk of the peace
of conviction to
be evidence
thereof.

License in case of
conviction for
selling or having
wine, sweets, &c.
to be void.

Section 17. "No person licensed to retail beer or cider under the said recited Acts or this Act shall forfeit his license for a first offence against the tenor or conditions of his license, except as hereinbefore provided; and no such person shall be deemed to have forfeited his license, on any conviction by any justices of the peace for any offence, unless suc

No person to for-
feit his license for
a first offence;
and no license to
be void unless so
adjudged.

2. License, &c. for, &c.

Notice to the
Excise.

Third offence.

forfeiture shall be adjudged and declared by the justice or justices by whom such person shall be convicted of the offence in respect of which the forfeiture shall be incurred; and when any justices of the peace shall adjudge and declare the license of any person to be forfeited, such justices shall cause notice in writing to be immediately given to the commissioners of excise within the limits of the chief office of excise, or to the collector of excise out of such limits, of such adjudication."

By the 11 Geo. IV. & 1 Will. IV. c. 64, s. 16, (*post*, 87.) the licenses of persons guilty of a third offence against the tenor of their license, may be adjudged by the court of quarter sessions on appeal forfeited and void.

(6.) MANAGEMENT AND REGULATION OF LICENSED HOUSES.

(a) *Descriptive Board to be put on Houses.*

Descriptive
boards to be put
upon house.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 6, "Every person who shall be licensed to sell beer, ale, and porter by retail, under the provisions of this Act, shall cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board to be placed over the door of the house or premises in which such person shall be licensed to sell beer by retail, the Christian and surname of the persons mentioned in such license, at full length, together with the words 'licensed to sell beer by retail;' and every such person shall preserve and keep up such name and words so painted as aforesaid during all the time that such person shall continue so licensed, upon pain that every person in any respect making default herein shall forfeit and pay for every such offence the sum of ten pounds."

The board over
the door to state
"not to be drunk
on the premises,"
or, "to be drunk
on the premises."

And by 4 & 5 Will. IV. c. 85, s. 18, "Every person who shall be licensed to sell beer, or cider or perry by retail, under the authority of the said recited Act (1 Will. IV. c. 64), and this Act, shall, on the board by the said Act required to be placed over the door of every person licensed under the same, paint or cause to be painted and kept thereon, after the words 'licensed to sell beer or cider by retail,' the additional words 'not to be drunk on the premises,' or 'to be drunk on the premises,' as the case may be, on pain of forfeiting the penalty by the said Act imposed for not having such board affixed and continued over the door."

(b) *Hours for opening and closing Houses.*

Houses to be
closed by order of
justices in riots,
&c.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 11, "it shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this Act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the license granted to such person."

Form of conviction
for.

From the case of *Newman v. Hardwicke*, (8 *Ad. & Ell.* 124.) it would seem that a conviction under this section should set out the order of the justices, and state the particular time at which the beer-house was kept open.

Hours for opening
and closing
houses.

By the 3 & 4 Vict. c. 61, s. 15, "No person licensed to sell beer or cider by retail under the said recited Acts (11 Geo. IV. & 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85) or this Act, shall have or keep his house open for the sale of beer or cider, nor shall sell or retail beer or cider, nor shall suffer any beer or cider to be drank or consumed in or at such

house, at any time before the hour of five of the clock in the morning nor after twelve of the clock at night of any day in the week in the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth, or Southwark, as defined by an Act passed in the second and third years of his late Majesty King William the Fourth, intituled 'An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs in England and Wales, in so far as respects the Election of Members to serve in Parliament,' nor after eleven of the clock within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed two thousand five hundred, or within one mile, to be measured as aforesaid, (that is, by the nearest public street or path, sect. 1, *ante*, 69), from any polling place used at the last election for any town having the like population, and returning a member or members to parliament, nor after ten of the clock in the evening elsewhere; and if any such person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider, at any time other than as hereinbefore prescribed and directed, such person shall forfeit the sum of forty shillings for every offence, and every separate sale shall be deemed a separate offence."

2. License,
&c. for, &c.

On week days.

2 & 3 Will. IV.,
c. 64.

Penalty.

The meaning of the word "place" used in the 15th section of 3 & 4 Vict. c. 61, has chiefly reference to a place having a collection of inhabitants to the required number, and having a name denoting such collection, and therefore a place having a population exceeding two thousand five hundred, and being an aggregation of houses and inhabitants with a separate name, and comprising parts of three townships, each of which maintains its own poor separately, but having no local rights peculiar to itself, is a place in which a house licensed therein may be kept open till eleven of the clock, although the beer house was situated in one of the townships comprised within it, and having less than two thousand five hundred inhabitants. (*Reg. v. Charlesworth*, 20 L. J. M. C. 181; 2 L. M. & P. 117.)

W. was a hamlet maintaining its own poor, but within a poor law union, and contained ninety-four inhabitants, but the population of the parish within which it was situate exceeded two thousand five hundred persons: it was held that a licensed beer house in W. might, under the 15th section, be kept open after ten o'clock. (*Smith v. Redding*, 6 B. & S. 617-621; 35 L. J. M. C. 202; see also *Windsor v. Jeffery*, 6 B. & S. 628.)

Bradley Green was a place within the parish of Biddulph, the population of which exceeded two thousand five hundred, though the population of Bradley Green itself was less than that number, and it was held that a beer house in Bradley Green might be kept open after ten o'clock. (*Scott v. Washington*, 6 B. & S. 617; 13 W. R. 939; *Windsor v. Jeffery*, *ubi sup.*)

As to the hours for opening beer houses on Sundays, Christmas Day, Good Friday, and fast days, see the provisions of the 11 & 12 Vict. c. 49, as to morning hours, (*post*, p. 126,) and the 18 & 19 Vict. c. 118, as to afternoon hours, (*see post*, p. 127).

By the 2 & 3 Vict. c. 47, no licensed victualler or other person shall open his house within the metropolitan police district, for the sale of wine, spirits, beer, or other fermented or distilled liquors, on Sundays, Christmas Day, and Good Friday, before the hour of one in the afternoon, except for refreshment for travellers, (*see post*, p. 127).

The 11 Geo. IV. & 1 Will. IV. c. 64, s. 14, and the 4 & 5 Will. IV. c. 85, s. 6, by which the hours for opening and closing beer houses were formerly regulated, according to the order of the justices for that purpose, have been repealed by the 3 & 4 Vict. c. 61, s. 14, and these hours are now fixed by section 15 above cited, as to week days.

A conviction under 11 Geo. IV. & 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85, for keeping a house open for the sale of beer, and selling

On Sundays.

Public houses
within the
metropolitan
police district
not to be opened
before one o'clock
on Sundays, &c.
&c.

Form of
conviction for.

2. License,
&c. for, &c.

Penalty for
suffering beer to
be drunk in the
house at pro-
hibited times.

beer, and suffering it to be drunk on the premises, (which expressions are repeated in the above section of the 3 & 4 Vict. c. 61), at a time of day prohibited by an order of justices, and fining the party charged in a single penalty for "the offence," was held bad, as charging more than one distinct offence. (*Newman v. Bendyshe*, 10 *Ad. & Ell.* 11.)

The penalty under the above 15th section of 3 & 4 Vict. c. 61, it will be seen, is incurred by keeping the house open for selling, or for selling at any time other than the prescribed hour, and does not extend to suffering beer to be drunk or consumed in the house, but this latter offence would be punishable under 11 Geo. IV. & 1 Will. IV. c. 64, section 15, *post*, 86, which imposes a general penalty where the Acts give no specific penalty.

(c) *Standard Measures to be used.*

Standard mea-
sures to be used.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 12, "Every person under this Act licensed to sell beer by retail shall sell or otherwise dispose of all such beer by retail (except in quantities less than a half-pint) by the gallon, quart, pint, or half-pint measure sized according to the standard, and shall also retail the same in a vessel sized according to such standard, and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty days next after that on which such offence was committed before two justices; and such penalty shall be over and above all penalties to which the offender may be liable under any other Act." (See title "*Weights and Measures*," Vol. V.)

Forfeiture and
penalty for not
using them.

(d) *Officers of Excise and Constables, when authorised to enter Licensed Houses, and License to be produced before Magistrates, if required.*

Officers of excise
empowered to
enter the pre-
mises of licensed
beer retailers;

By 3 & 4 Vict. c. 61, s. 11, "It shall be lawful for any officer of excise, at all times during the hours in which any house licensed for the retail of beer or cider may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of beer or cider, and to make search for and seize all wine and spirits and sweets which may be found in any such house, cellar, room, or place, and to examine all beer or cider kept therein."

and also the
houses of persons
selling beer at
the rate of 1½d.
or less the quart.

Section 12. "That it shall be lawful for any officer of excise, during the hours which any house is kept open for the sale of beer after the rate of one penny halfpenny or after a less rate the quart, to enter into every such house, cellar, room, or place for the keeping or retailing such beer, and to make search for and seize all wines, spirits, sweets, and all beer which by law they are not entitled to sell."

Constables, &c.
empowered to
visit houses
licensed for the
sale of beer to
be consumed on
the premises.

And by 4 & 5 Will. IV. c. 85, s. 7, "It shall be lawful for all constables and officers of police, and they are hereby authorised and empowered, to enter into all houses which are or shall be licensed to sell beer or spirituous liquors *to be consumed upon the premises* when and so often as such constables and officers shall think proper; and if any person *having such license* as aforesaid, or any servant or other person in his employ or by his direction, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such license shall for the first offence forfeit and pay any sum not exceeding *five pounds*, together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices before whom any such person shall be convicted of such offence for the second time to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper."

Penalty on
conviction.

The police have a right under this section to be admitted to any part of the premises which might be used for the consumption of beer under

the license; (*Reg. v. Tott*, 30 *L. J. M. C.* 177;) and, therefore, it is an offence under this section to refuse admission to an outhouse used as a cellar at one side of a yard, adjoining to and at the back of the house where the cellar was occupied with the house, though without any direct internal communication with it. In this case the policeman, as he was passing the house, heard persons within, and applied to be admitted. He was admitted into the house, but before his admittance he heard persons go to the back part of the premises. Upon going into the yard he heard several persons in the outhouse, and applied to be admitted there, but was refused. Held, that the alehouse keeper might be convicted under this section. (*Ib.*)

The penalty for a second conviction is disqualification from selling beer, &c. for two years or less, and the section does not warrant the imposition of a fine in addition. (*Reg. v. Tott, ubi sup.*) And a conviction was quashed which imposed the double penalty. (*Ib.*)

Sect. 10. "In case any complaint shall be laid before two justices of the peace against any person licensed for any offence against the tenor of his license, or against this Act or the said recited Act, it shall be lawful for the said justices (if they shall think fit) to require such person to produce his license before them for their examination; and if such person shall wilfully neglect or refuse so to do he shall forfeit and pay for such offence such sum, not exceeding five pounds, as the said justices shall think proper; and such person shall and may be convicted, proceeded against, and dealt with for such offence in all respects in the same manner, *mutatis mutandis*, as is directed by the said recited Act with regard to persons guilty of a first offence against the said Act; and the penalty imposed for such offence shall be applied in the same manner as a penalty for a first offence against the said Act is thereby directed to be applied."

2. License,
&c. for, &c.

Penalty.

Retailers compellable to produce their licenses on requisition of two magistrates.

Penalty.

(e) *Permitting Drunkenness or Disorderly Conduct in House—
Adulterating Beer.*

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 13, "Every seller of beer, ale, and porter by retail, having a license under the provisions of this Act, who shall permit any person or persons to be guilty of drunkenness or disorderly conduct in the house or premises mentioned in such license, shall for every such offence forfeit the respective sums following; and every person who shall in any way transgress or neglect, or shall be a party in transgressing or neglecting, the conditions and provisions specified in such license, or shall allow such conditions or provisions to be in any way transgressed or neglected in the house or premises so licensed, shall be deemed guilty of disorderly conduct; and every person so licensed who shall permit any such disorderly conduct, shall for the first offence forfeit any such sum, not less than forty shillings nor more than five pounds, as the justices before whom such retailer shall be convicted of such offence shall adjudge; and for the second such offence, any sum not less than five pounds nor more than ten pounds; and for the third such offence, any sum not less than twenty pounds nor more than fifty pounds; and it shall be lawful for the justices before whom any such conviction for such third offence shall take place to adjudge, if they shall so think fit, that such offender shall be disqualified from selling beer by retail for the space of two years next ensuing such conviction, and also, if they shall so think fit, to adjudge that no beer shall be sold by retail by any person in the house or premises mentioned in the license of such offender." A charge of permitting drunkenness and other disorderly conduct is not double, for the charge is the permission which may at one and the same time be both of drunkenness and disorderly conduct, (*Wray v. Toke*, 12 *Q. B.* 508; 17 *L. J. M. C.* 183.) and the names of the drunkards or disorderly persons need not be named in the conviction. (*Ib.*)

Retailer permitting drunkenness, &c., in house, penalty for;

or transgressing conditions of his license. (See form of license, post.)

First offence.

Second offence.

Third offence.

2. *License, &c. for, &c.*

Adulterating,
&c., beer,
penalty for.

First offence.

Second offence.

Selling after con-
viction of second
offence,

penalty for.

Having pro-
hibited articles,
penalty for.

The same section further enacts that, "If any person so licensed as aforesaid shall knowingly sell any beer, ale, or porter made otherwise than from malt and hops, or shall mix or cause to be mixed any drugs or other pernicious ingredients with any beer sold in his house or premises, or shall fraudulently dilute or in any way adulterate any such beer, such offender shall for the *first* offence forfeit any sum not less than ten pounds nor more than twenty pounds, as the justices before whom such offender shall be convicted of such offence shall adjudge; and for the *second* such offence, such offender shall be adjudged to be disqualified from selling beer, ale, or porter by retail for the term of two years, or to forfeit any sum of money not less than twenty pounds nor more than fifty pounds, at the discretion of the justices before whom such offender shall be adjudged guilty of such second offence; and if any offender convicted of such offence as last aforesaid shall during such term of two years sell any beer, ale, or porter by retail, either in the house or premises mentioned in the license of such offender, or in any other place, he shall forfeit any sum not less than twenty-five pounds nor more than fifty pounds, and shall be subject to a like penalty at any and every house or place where he shall commit such offence; and if any person shall at any time, during any term in which it shall not be lawful for beer to be sold by retail on the premises of any offender, sell any beer by retail on such premises, knowing that it was not lawful to be sold, such offender shall forfeit any sum not less than ten pounds nor more than twenty pounds, as the convicting justices shall adjudge."

Besides the penalty imposed for the adulteration of beer by this section, a beer-house keeper is also liable to the penalties imposed by the 56 Geo. III. c. 58, s. 2 (see *post*, "*Excise*," Vol. II.), for having in his possession any of the prohibited articles therein specified, or any other article or preparation to be used as a substitute for malt or hops. (*Att.-Gen. v. Lockwood*, 9 *M. & W.* 378; 10 *M. & W.* 464.) The use of sugar in brewing beer is permitted by 10 *Vict. c. 5.*

(7). PENALTIES FOR SELLING BEER, CIDER, &C., WITHOUT LICENSE.

Penalty on un-
licensed persons
selling beer and
cider by retail to
be drunk off the
premises, 10*l*.

To be drunk on
the premises, 20*l*.

By statute 4 & 5 Will. IV. c. 85, s. 17, "Every person (not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, ale-house, or victualling-house), who shall sell any beer, or cider, or perry by retail not to be drunk or consumed in or upon the house or premises where sold, without having an excise retail license in force authorising him so to do, shall forfeit *ten pounds*; and every person (not being duly licensed to sell beer, cider, and perry as the keeper of a common inn, ale-house, or victualling-house), who shall sell any beer, cider, or perry by retail to be drunk or consumed in or upon the house or premises where sold, without having an excise retail license in force authorising him so to do, whether such person shall or shall not be licensed to sell beer to be drunk or consumed off the premises where sold, shall forfeit *twenty pounds*; which said penalties shall be sued for and recovered, mitigated and applied, by the same means, and under the same provisions as any other penalty may be sued for and recovered, mitigated and applied, under any law or laws of excise." (See Vol. II., tit. "*Excise*.")

Permitting drink-
ing beer in a
neighbouring
house, or in any
shed, &c., with
intent to evade
the provisions of
the Act, to be
deemed drinking
on the premises.

Sect. 4. "If any person licensed to sell beer or cider not to be consumed upon the premises shall, with intent to evade the provisions of this Act, take or carry, or authorise or employ or permit or suffer any person to take or carry, any beer or cider out of or from the house or premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever belonging to such licensed person, or hired, used, or occupied by him,

such beer or cider shall be deemed and taken to have been drunk or consumed upon the premises, and the person selling the same shall be subject to the like forfeitures and penalties as if such beer or cider had been actually drunk or consumed in any house or upon any premises licensed only for the sale thereof as aforesaid."

Sect. 19. "'And whereas doubts are entertained as to what is a selling of beer or cider or perry by retail;' be it therefore enacted, that every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by retail."

By the 3 & 4 Vict. c. 61, s. 13, "If any person, not being duly licensed to sell beer or cider, shall retail any beer or cider, either to be consumed in or upon the house or premises or off the premises where sold, or if any person shall sell any beer or cider to be consumed in or upon the house or premises where sold, without being duly licensed so to do, such person shall, in addition to any excise penalty to which he may thereby become subject, forfeit five pounds, such penalty to be recovered in the same manner as any other penalty (not being excise penalties) are by the said recited Acts (11 Geo. IV. and 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85) or this Act to be recovered, levied, and applied: Provided always, that no information or other proceeding for the recovery of the said penalty shall be exhibited or commenced except by and in the name of a constable or other officer of the peace."

Where a constable tapped at a window of the beer seller's premises, which stood about three yards back from the highway without any mark or boundary between them, and on the window being opened received a mug of beer through it, and drank part of it, standing as close to the window as he could, and the remainder while sitting on the window sill, it was held that there was no evidence that the beer was sold to be consumed on the premises, and a conviction under the above 13th section was quashed. (*Deal v. Schofield*, 3 L. R. Q. B. 8; 37 L. J. M. C. 15.)

But what is a drinking upon the premises is a question of fact for the justices, and a conviction for the selling beer by retail to be drunk upon the premises without a license by a person who had a license to sell beer to be drunk off the premises only, was upheld where the beer sold was drunk by persons sitting on a form outside the door and touching the wall of the house. (*Cross v. Watts*, 32 L. J. M. C. 73; 13 C. B. N. S. 239, S. C.)

It was decided that the above 13th section applied to the retailing or sale of any beer, strong or weak table beer, or other cheap or dear, and there is no exception in favour of beer sold at the rate of 1½d. a quart or less by reason of the preceding section of the above Act, or anything contained in the 42 Geo. III. c. 38, s. 18. (*Read v. Storey*, 30 L. J. M. C. 110; 6 H. & N. 423, S. C.). And now, by 24 & 25 Vict. c. 21, s. 3, it is expressly enacted that any person may take out a license for sale in any house or shop of table beer, at a price not exceeding the rate of 1½d. a quart, and not to be drunk or consumed on the premises when sold.

Sect. 7. "If any person convicted of felony or of selling spirits without license shall, after being so convicted, take out or have any license to sell beer or cider by retail, the same shall be void, and every person who, after being so convicted, shall sell any beer or cider by retail in any manner whatsoever, shall incur the penalty for so doing without license, and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace, or person acting as such, of any such conviction, shall be legal evidence thereof. (See *ante*, 77.)

2. License, &c. for, &c.

What is a retailing of beer, cider, or perry.

Additional penalty on unlicensed persons selling beer or cider;

to be sued for by a peace officer.

Persons convicted of felony, or of selling spirits without license, if they sell beer, incur the penalty of selling without license, though they may have taken out license for so doing.

2. *License, &c. for, &c.*

Licenses under this Act not to authorise persons to hold licenses for sale of wine. Penalty on persons licensed under this Act permitting wine or spirits to be consumed on the premises.

Persons licensed to sell beer or cider under this Act liable to excise penalties for selling spirits or wine without license.

Penalty on persons licensed to sell beer or cider having wine, spirits, or sweets in their entered premises.

Wine, &c., to be forfeited.

Licenses in such case to be void.

Search for wine, &c.

(8.) PENALTIES FOR PERSONS LICENSED TO SELL BEER, SELLING OR HAVING IN THEIR POSSESSION WINE, SPIRITS, OR SWEETS.

By statute 4 & 5 Will. IV. c. 85, s. 16, "No license to be granted under the said recited Act and this Act for the sale of beer or cider shall authorise any person to take out or hold any license for the sale of wine, spirits, or sweets or made wines, or mead or metheglin; and if any person licensed under the said recited Act and this Act to sell beer or cider shall permit or suffer any wine or spirits, sweets or made wines, mead or metheglin, to be brought into his house or premises to be drunk or consumed there, or shall suffer any wine, spirits, sweets, mead or metheglin, to be drunk or consumed in his house or premises by any person whomsoever, such person shall, over and above any excise penalty or penalties to which he may be subject, forfeit twenty pounds, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this Act to be recovered, levied, mitigated and applied."

Sect. 20. "And whereas doubts have been entertained whether persons licensed to sell beer or cider under the said Act of the first year of his Majesty's reign, who shall sell spirits or wine, or sweets or made wines, or mead or metheglin, without being licensed so to do, are liable to the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin, without license; be it therefore declared and enacted, that all persons licensed under the said recited Act and this Act selling wine or spirits, or any sweets or made wines, or mead or metheglin, shall be liable to and shall incur all the penalties imposed by the laws of excise for selling spirits or wine, sweets or made wines, mead or metheglin, without license."

By statute 3 & 4 Vict. c. 61, s. 10, "If any person licensed to retail beer or cider under the said recited Acts or this Act shall receive into or keep or have in his possession, in any cellar, room, or place entered for storing, keeping, or retailing beer or cider, any wine or spirits or sweets, such person shall, in addition to all other penalties, forfeit fifty pounds, to be recovered and applied under the powers and provisions of the said Acts of the seventh and eighth years of the reign of his said late Majesty King George the Fourth, (c. 58,) and the fourth and fifth years of the reign of his said late Majesty King William the Fourth (c. 51); and all wine and spirits and sweets found in any such entered cellars, rooms, or places shall be forfeited; and on conviction of any such licensed person in any penalty for having wine or spirits or sweets in his possession, or for selling or retailing wine or spirits or sweets, the license of such person for retailing beer or cider shall become null and void, and shall be so adjudged." (See tit. "*Excise*," Vol. II.)

And ss. 11 and 12 authorise officers of excise to enter and search for and seize all such wine, spirits, and sweets. (*Ante*, 80.)

But now it is provided that nothing in the above Act contained shall disqualify a person from taking out a license to sell wine under the 23 Vict. c. 27; nor shall subject a person licensed for the sale of wine under such Act to any penalty or forfeiture by reason or on account of his selling, dealing in, retailing, or receiving into or having in his possession any wine or sweets, or made wines, or mead or metheglin. (24 & 25 Vict. c. 91, ss. 10, 11.)

(9.) PROCEEDINGS FOR THE RECOVERY OF PENALTIES.

(a) *What Justices may act.*

The 11 Geo. IV. & 1 Will. IV. c. 64, s. 15 (*post*, 86), enacts, that all penalties shall be recovered before *two justices acting in petty sessions* in or for the division or place in which the beer-house is situate.

By the 2 & 3 Vict. c. 71, (the Metropolitan Police Act,) any one ma-

Two justices sitting in petty sessions to act.

Within the metropolitan police district.

magistrate appointed under that statute may do alone any act "which by any law now in force or by any law not containing an express enactment to the contrary, hereafter to be made, is or shall be directed to be done by more than one justice: provided that none of the said (metropolitan police) magistrates shall be competent to act as a justice of the peace either alone or with any other justice or justices in any thing which is to be done at a special or petty session of *all* the justices acting in the division, or by the justices of any of the said counties or liberties in quarter session assembled."

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 23, it is enacted, that "Whenever at any sessions for any liberty, county of a city, county of a town, city or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city or town corporate, to act within such liberty or place, and with the justice or justices thereof who shall be present at any such sessions as aforesaid, for the purpose of hearing complaints as to offences against this Act, any law, custom, or usage to the contrary notwithstanding."

Sect. 24. "Nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this Act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and the liberties thereof, and for the justices of and for the liberties thereof, and the corporate members, to act within the same respectively as they have been accustomed, and for them or any of them to act within each of the corporate port or ancient town, with the justice or justices of each such corporate member, for the purpose of hearing complaints as to offences against this Act in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city or town corporate."

2. *License, &c. for, &c.*

If justices of liberties, &c., do not attend sessions, county justices may act.

Powers given to justices of counties not to extend to cinque ports.

(b) *Summons or Order, how served.*

By the 4 & 5 Will. IV. c. 85, s. 22, "No summons or order issued by any justice of the peace or other magistrate shall be deemed to be legally served unless it shall be served by some constable, special constable, police, or other peace officer."

A summons against a beer house keeper for permitting drunkenness and other disorderly conduct need not specify the names of the drunkards, or state that they were unknown. (*Wray v. Toke*, 12 Q. B. 507; 17 L. J. M. C. 183.)

Service of summons or order.

(c) *Information, how and by whom exhibited.*

By the 3 & 4 Vict. c. 61, s. 13, (*ante*, 83,) no information or other proceeding for the recovery of the penalty incurred under that section shall be exhibited or commenced except by or in the name of a constable or other officer of the peace.

In case of appeal, (*post*, 88,) the justices may order the constable or other peace officer of the parish to carry on the proceedings.

With the above exception an information under these Acts may be exhibited by any person whomsoever. (11 Geo. IV. & 1 Will. IV. c. 64, s. 15, *infra*.) In *Moore v. Smith*, (1 E. & E. 597; 28 L. J. M. C. 126,) the information was exhibited by the excise officers for an offence against 4 & 5 Will. IV. c. 85, s. 17.

Information, how and by whom exhibited.

In *Reg. v. Rawlins*, (8 C. & P. 441), Patteson, J., inclined to think

2. *License, &c. for, &c.*

that the information (as directed by the 15th sect. of the 11 Geo. IV. & 1 Will. IV. c. 64, *infra*) need not be in writing, nor as it seems on oath. (See tit. "*Conviction*," *post*.)

(d) *Evidence and Witnesses.*

Evidence of conviction.

By 3 & 4 Vict. c. 61, s. 7, (*ante*, 77,) on the prosecution for the recovery of a penalty under that section, a certificate from the clerk of the peace or person acting as such, of any such conviction as mentioned in that section, shall be legal evidence thereof; and see 11 Geo. IV. & 1 Will. IV. c. 64, s. 26, *post*, 87.

Penalty on witnesses not attending.

Sect. 20. "Any person summoned as a witness to give evidence before any justices or sessions touching any of the matters aforesaid, either on the part of the complainant or of the person accused, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justices or sessions, or who appearing shall refuse to be examined on oath or affirmation and give evidence, shall on conviction before such justice forfeit and pay for every such offence any sum not exceeding ten pounds." (See further, "*Evidence*," Vol. II.)

(e) *Proceedings before Justices—Mitigation of Penalties—Conviction.*

Penalties recoverable before two justices in petty sessions.

Limitation of prosecutions.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 15, "All penalties under this Act, save and except the penalty hereinbefore mentioned for selling beer by any person not duly licensed (*ante*, 82), shall and may be recovered upon the information of any person whomsoever before *two justices acting in petty sessions*: and every such penalty shall be prosecuted and proceeded for *within three calendar months* next after the commission of the offence in respect of which such penalty shall be incurred; and every person licensed under this Act who shall be convicted, before two justices so acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence *against the tenor of the license* to him granted under this Act, or of any offence for which any penalty is imposed by this Act, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted before two justices within the space of twelve calendar months next preceding of some offence against the tenor of his license or against this Act, be adjudged by such justices to be guilty of a first offence against the provisions of this Act, and to forfeit and pay any penalty by this Act imposed for such offence, or if no specific penalty be imposed for such offence, then any sum not exceeding five pounds, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of twelve calendar months next preceding of one such offence only, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this Act, and to forfeit and pay any penalty by this Act imposed for such offence, or if no specific penalty be so imposed, then any sum not exceeding ten pounds, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of the eighteen calendar months next preceding of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this Act, and to forfeit and pay any penalty imposed by this Act in respect of such offence, or if no such specific penalty shall be imposed, then to forfeit and pay the sum of fifty pounds, together with the costs of the conviction."

Penalty where no specific penalty named.

The like, for a second offence.

The like, for a third offence.

Form of conviction.

Sect. 25. "And, in order to prevent frivolous and vexatious ap-

peals, a conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner." (See this form, *post*, p. 137, No. 9.) And now a conviction following the directions of the 11 & 12 Vict. c. 43, would be good and effectual, as it would seem not to be within the exception contained in the 35th section. (See *Reg. v. Bakewell*, 7 E. & B. 848; 26 L. J. M. C. 150; *ante*, p. 72.)

By sect. 26, "The justices before whom any such conviction shall have been made shall return the same, or cause the same to be returned, to the next general session or quarter session of the peace, holden for the county or place wherein the offence shall have been committed, and such conviction shall be then and there delivered to the clerk of the peace or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant, on demand, upon payment of one shilling, shall be legal evidence of every such conviction."

2. *License, &c. for, &c.*

Conviction to be returned to sessions and filed.

Sect. 27. "No conviction under this Act, nor any adjudication made upon appeal therefrom, shall be quashed for want of form; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same." (See *post*, tit. "*Conviction.*")

Conviction not to be quashed for want of form.

An indictment for perjury, committed on the hearing of an information before justices, against a person for selling beer at improper hours, must allege that the justices were acting for the division in which the house was situated, though it was not necessary to say that they were assembled in petty session, for the meeting of two justices was of itself a petty session, but Mr. J. Patteson was inclined to think that there was no necessity that the information should be in writing. (*Reg. v. Rawlins*, 8 C. & P. 439.) A conviction need not state that the prosecution was within three months after the offence, (*Wray v. Toke*, 12 Q. B. 508; 17 L. J. M. C. 83,) and if it follow the form given in the Act it is sufficient as to the statement of place of holding petty sessions. (*Ib.*)

See also as to the form of awarding costs, the above case. And see now, 11 & 12 Vict. c. 43, and *Reg. v. Bakewell*, *ubi supra*.

By 3 & 4 Vict. c. 61, s. 16, "it shall be lawful for any justice or justices of the peace, when he or they shall see cause, to mitigate any penalty incurred for any offence committed against the said recited Acts or this Act; provided that where any conviction shall take place on any information exhibited under the laws of excise, such mitigated penalty shall not be less than one fourth part of the penalty."

Justices may mitigate penalties

(10.) CERTIORARI—APPEAL, AND COSTS OF APPEAL.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 27, no conviction or any adjudication made upon appeal therefrom shall be removed by writ of certiorari or otherwise into any of her Majesty's superior courts of record. (See tit. "*Certiorari.*" *post*.)

Sect. 16. "It shall and may be lawful for the party convicted of any such *third* offence (sect 15, *ante*, 86) to appeal to the general sessions or quarter sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions; and in such case the party so convicted shall before such justices so convicting forthwith enter into a recognizance, with two sufficient sureties, personally to appear at the general session or quarter session, and to abide the judgment of the court thereupon, and to pay such costs as shall be by

Appeal to quarter sessions on third offence.

2. *License,
&c. for, &c.*

Recognizance to
appear,
and give evi-
dence.

Judgment of
sessions.

May fine offender
100*l.*,
and declare
license void ;
no beer to be sold
on the premises
for a year ;

license granted to
offender void.

Costs of appeal,
(see tit. "*Costs*,"
Vol. I.)

Commitment in
case of non-
payment (a).

Costs where
judgment
reversed.

the court awarded ; which recognizances such justices are hereby authorised to require and take ; or, in failure of the party convicted entering into such recognizance, such conviction shall remain good and valid to all intents and purposes ; and the said justices who shall take such recognizance from the party convicted are also hereby required to bind the person who shall make such charge in a recognizance to appear at such general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence ; and it shall be lawful for the said court of general session or quarter session to adjudge such person to be guilty of any such third offence against the provisions of this Act, as the case may be, and such adjudication shall be final to all intents and purposes ; and it shall be lawful for such court of general session or quarter session to punish such offender by fine not exceeding the sum of *one hundred pounds*, together with the costs of such appeal, or to adjudge the license granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no beer shall be sold by retail in the house or premises mentioned in the license of such offender for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of beer as aforesaid, and such license to be forfeited and void ; and if such license shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly ; and whenever in such case or in any other case the license of such offender shall be adjudged to be void, such offender shall from and after such adjudication be deemed and taken to be incapable of selling beer, ale, or porter by retail, in any house kept by him, for the space of two years, to be computed from the time of such adjudication ; and any license granted to such person during such term shall be void to all intents and purposes."

Sect. 17. "Whenever it shall happen that any appeal respecting which any recognizance shall be entered into in pursuance of this Act shall be dismissed, or that the conviction appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required to adjudge and order that the party so having appealed or having entered into such recognizance shall pay to the justices before whom such recognizance shall have been entered into, or to whomsoever they shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been put in consequence of the intention or declared intention of such party to appeal ; and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid : and in every case in which the conviction so appealed against shall be reversed, it shall be lawful for such court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices whose judgment shall have been so reversed shall have acted on the occasion when they shall have given such judgment, shall pay to such justices, or whomsoever they shall appoint, such sum as shall in opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been so put ; and the said treasurer is hereby

(a) As to defects in form, being cured, see the 27th section, *ante*, 87.

As to commitments in general, see *post*, "*Commitment in Execution*."

authorised to pay the same, which shall be allowed to him in his accounts." See further as to costs, tit. "*Appeal, Costs.*"

Sect. 18. "In every case in which any appeal shall be made by any person convicted of any offence under the provisions of this Act, to the general session or quarter session, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person charged shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and it shall be lawful for the justices before whom such offender shall have been convicted to order the treasurer of the county or place in and for which such justices shall then act to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution, which order the clerk of the peace is hereby directed and required forthwith to make out and to deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to such constable or other peace officer, or other person authorised to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his accounts." (As to appeals in general, see *post*, "*Appeal.*")

2. *License &c. for, &c.*

Proceedings at session, when to be carried on by petty constable (a).

Expenses of prosecution to be charged on county rates (b).

(11.) PENALTIES, HOW LEVIED AND ENFORCED.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 21, "In every case in which, under the authority of this Act, any justices shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect, within seven days after his conviction, to pay such penalty, and any costs which shall have been duly assessed and ascertained by such justices, it shall be lawful for such justices, if they think fit, to issue their warrant (d), and to levy the amount of such penalty and costs by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justices that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justices to commit (f) the offender to the common gaol or to the house of correction of the county or place for which such justices shall be then acting, for any term not exceeding one calendar month if the penalty shall not be above five pounds, for any term not exceeding three calendar months if the penalty shall be above five pounds and shall not be more than ten pounds, and for any term not exceeding six calendar months if the penalty shall be above ten pounds: provided, nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction

Penalties may be levied by distress (c).

If not sufficient distress on goods, justices may commit (e).

Proviso for offenders paying penalties, &c. to gaoler.

(a) By 7 & 8 Geo. IV. c. 38, constables are not required to make presentments respecting unlicensed ale-houses.

(b) As to these rates, see "*County Rate*," Vol. I.

(c) See further, *post*, "*Warrant of Distress*," Vol. V.

(d) See the form (No. 26), *post*.

(e) As to defects in form being cured, see the 27th section, *ante*, 87; and see further, *post*, "*Commitment in Execution.*"

(f) See the form (No. 27), *post*.

2. *License, &c. for, &c.*

in consequence of his not having duly paid such penalty and costs, if such offender shall pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justices shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, such offender shall be forthwith discharged."

Application of penalties.

By sect. 22, "Any justices before whom any penalty shall be recovered under the provisions of this Act shall award, *if they shall think fit*, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor; and the remainder, or in case no part of such penalty shall be awarded to the prosecutor, then the whole of such penalty shall be awarded to be paid and shall be paid to the treasurer of the county within which such offence shall be committed, to be applied by the said treasurer towards defraying the expenses of such county, and in aid of the county rates of such county."

By the 3 & 4 Vict. c. 61, s. 19, *ante*, 66, the penalties under this Act, where not otherwise directed, are to be recovered under the provisions of the former Acts.

And by section 21, *ante*, 66, the powers, provisions, and penalties of the former Acts are to apply to persons licensed under this Act.

And see now the provisions of the 11 & 12 Vict. c. 43, and *tits. "Conviction," Vol. I.; "Commitment," Vol. I.; "Warrant of Distress," Vol. V.*

(12.) ACTIONS AGAINST JUSTICES AND OTHERS.

Actions against justices, &c.

By 11 Geo. IV. & 1 Will. IV. c. 64, s. 28, "Every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this Act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this Act, he may plead the general issue and give the special matter in evidence"

Limitation of.

General issue.

As to enactments of this kind, and the law in general as to actions against justices of the peace and other officers, see 11 & 12 Vict. c. 44; *post*, "*Justices*," Vol. III.

III. License to sell Wine and Spirits, Beer, &c. in Inns or Public Houses.

What licenses requisite to keep an inn.

To enable a person to keep an inn, or (as it is now more generally called) a public house, and sell therein wine and spirits, beer, cider or perry, or other exciseable liquors, two licenses are necessary; first, a *magistrates' license*; and secondly, an *excise license*. Neither is operative alone, both together they become so. (*Rex v. Drake*, 1 *Burn's J.* 24th ed. 56; *Rex v. Downes*, 3 *T. R.* 560.)

Magistrates' license only here considered.

We shall in this place notice only the laws and regulations as to the *magistrates' license*; as to the license to be obtained from the *excise*, see *post*, "*Excise*," Vol. II. It may be as well to observe, that by the 9 Geo. IV. c. 61, s. 17, no excise license can be granted until a *magistrates' license* has been obtained.

The 9 Geo. IV. c. 61.

The only Act now in force regulating the licensing of alehouses by *magistrates*, for the selling therein of wine, spirits, beer, cider, perry, or other exciseable liquors, is the 9 Geo. IV. c. 61, intituled, "An Act to regulate the granting of Licenses to Keepers of Inns, Alehouses and

Victualling Houses in England" (a), which commences by reciting the expediency of reducing into one Act the laws relating to the licensing, by justices of the peace, of persons keeping or about to keep inns, ale-houses and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, in that part of the United Kingdom called England. The statutes relative to refreshment houses are noticed, *post*, tit. "*Refreshment Houses*," Vol. V.

We will at present consider this statute of 9 Geo. IV. c. 61, and the various laws and regulations relative to the *magistrates' license* for selling wine, spirits, beer, cider, or perry, or other exciseable liquors, in the following order :

3. *Magistrates' License for, &c.*

Title and recital of.

Division of subject.

1. *The Repeal of Statutes prior to the 9 Geo. IV. c. 61, 91.*
2. *The Places, &c., exempted from the Provisions of that Act, 92.*
3. *The Rules for Interpretation of it, 94.*
4. *The Places which require the License, 95.*
5. *Who may have it, 95.*
6. *Proceedings by Party before applying for License, 96.*
7. *Licensing Meeting, when and where held, 96.*
8. *What Justices may attend the Meeting—Proceedings at the Meeting to obtain License—The Adjournment of the Meeting, 98.*
9. *License, how granted, its Form, Duration and Effect, 100.*
10. *The Transfer of the License, and Grant of a fresh License in Case of Removal, Death, Bankruptcy, or other Contingency, 101.*
11. *Fees for granting the License, 105.*
12. *Penalty for selling Wine or Spirits, &c., without it, 105.*
13. *Penalty for not selling by Standard Measures, 107.*
14. *Penalty for not Closing Public Houses in Riots, 107.*
15. *Penalty and Punishment for Offences against the License, 107.*
16. *Compelling attendance of Witnesses—Conviction—Defects in Form—Certiorari, &c., 110.*
17. *Penalties, how to be recovered and applied, 111.*
18. *Appeal, &c., 113.*
19. *Actions against Justices, &c., Limitation of—Plea, &c., 117.*
20. *Remedies on Refusal to grant or transfer License, by Appeal, Mandamus, Action, Indictment, Criminal Information, &c., 117.*
21. *Remedy for improperly granting a License, 120.*

(1.) REPEAL OF STATUTES PRIOR TO 9 GEO. IV. c. 61.

By 9 Geo. IV. c. 61, s. 35, the Act is to commence on the 10th of October, 1828, next ensuing the passing thereof: and the section then repeals the statute 5 & 6 Edw. VI. c. 25; the 1 Jac. I. c. 9; the 4 Jac. I. c. 4 & 5; the 7 Jac. I. c. 10; and so much of the 21 Jac. I. c. 7, s. 4, as provides that any person, being an alehouse keeper, and who shall be convicted of any offence against the said Act, shall be disabled from keeping an alehouse for three years; and the 1 Car. I. c. 4; the 3 Car. I. c. 3; and so much of the 9 Geo. II. c. 23, ss. 14, 15, 20, as relates to the licensing of retailers of spirituous liquors, and to the

9 Geo. IV. c. 61.
Commencement
of Act.
Repeal of Acts.

(a) The statute regulating alehouses in Scotland is the 9 Geo. IV. c. 58.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

Except such of Acts as repeal former Acts, and except as to subsisting licenses, &c.

conviction of persons selling liquors by retail without a license, and to the summoning of excise officers for the more easy discovery of such offenders ; and so much of the 24 Geo. II. c. 40, s. 24, as relates to the fees of justices' clerks ; and so much of the 26 Geo. II. c. 13, s. 12, as prevents justices of the peace in certain cases from granting licenses ; and the whole of the 26 Geo. II. c. 31 ; and so much of the 28 Geo. II. c. 19, s. 2, as explains a clause in the last-mentioned Act ; and so much of the 29 Geo. II. c. 12, ss. 23, 24, as relates to continuing and renewing licenses ; and so much of the 30 Geo. II. c. 24, s. 14, as imposes a penalty on the keepers of public houses for suffering gaming ; and so much of the 5 Geo. III. c. 46, ss. 20, 21, 22, as requires retailers of exciseable liquors to exhibit their licenses, and clerks of the peace to deliver lists of persons licensed, and altering the punishment of such retailers selling without a license ; and the whole of the 32 Geo. III. c. 59 ; and so much of the 38 Geo. III. c. 54, s. 13, as exempts from the foregoing penalty persons selling beer or ale above certain quantities ; and the whole of the 39 Geo. III. c. 86 ; and so much of the 48 Geo. III. c. 143, ss. 7, 10, as relates to the form of justices' licenses, and to justices' clerks' fees ; and so much of the 4 Geo. IV. c. 125, ss. 1, 6, as alters the time for holding such meetings, and for giving notices of applying for licenses for houses not before licensed, "except only such parts of any of the said Acts as repeal any former Acts or parts of Acts, and except also, that all licenses granted and recognizances entered into under the said Acts hereby repealed, or any of them, or under the 3 Geo. IV. c. 77 (a), shall remain in full force and virtue until the end of the terms for which such licenses and recognizances respectively have been or shall be granted or entered into ; and all offences against the tenor of the said licenses, or in breach of the conditions of such recognizances, and all offences committed against the said recited Acts, or any of them, before the commencement of this Act, shall and may be prosecuted, heard, determined, and punished, as if this Act had not been made ; and all such offences committed after the commencement of this Act shall be prosecuted, heard, determined and punished under the provisions of this Act."

(2.) THE PLACES, &c., EXEMPTED FROM 9 GEO. IV. c. 61.

Act not to affect two Universities ; nor the Vintners of London ; nor to alter the time for licensing in London ; nor any law of excise ; nor to prohibit sale of beer at fairs.

Sect. 36. "Nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said Universities or otherwise ; or the master, wardens, freemen and commonalty of the Vintners of the city of London, but not to extend to those freemen of the said Company of Vintners who have obtained the same by redemption only ; nor to alter the time (b) of granting licenses for keeping inns in the city of London ; provided also, that nothing in this Act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for." (See *Reg. v. Archdall*, 8 *Ad. & Ell.* 281, where the right of the University of Cambridge to grant licenses was fully considered.)

But by the 2 & 3 Vict. c. 47, s. 41, "After the passing of this Act, every person who, by reason of his or her freedom of the mystery or

Freemen of Vintner's Company subject to certain provisions within the metropolitan police district.

(a) Now expired.
(b) The magistrates of London must pursue the other regulations of this Act relating to the manner and

place of holding the meeting. See *R. v. Downes*, 3 *Term Rep.* 560 ; *R. v. Justices of Surrey*, 2 *D. & R. Mag. Cas.* 435.

craft of Vintners of the city of London, or of any right or privilege of such mystery, shall claim to be entitled to sell foreign wine by retail, to be drunk or consumed on the premises within the metropolitan police district, without license, shall be subject to all the provisions of all Acts made for the regulation of persons so licensed, (except those provisions which require or refer to the taking out of a license, either from any justice of the peace or from the commissioners of excise,) and in the case of any offence committed by him or her against the tenor of the license granted under the provisions of any Act for the sale of exciseable liquors by retail to be drunk or consumed on the premises, shall be liable to be dealt with, proceeded against, and punished in like manner as if selling wine by license, and not by virtue of such claim or privilege."

But with respect to wine licenses. By 25 Vict. c. 22, s. 16, no freemen of the Company of Vintners shall be entitled to sell wine in more than one separate or distinct house or premises at the same time without taking out the proper excise license in that behalf, nor shall any freeman be entitled to exercise the said privilege, unless he shall have previously made an entry of the house or premises in which he intends to sell wine with the proper officer of excise in the manner directed in the 5th section of an Act, 4 & 5 Will. IV. c. 51.

Formerly, nothing in the 9 Geo. IV. c. 61, or the 11 Geo. IV. & 1 Will. IV. c. 64, extended to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair in like manner as such person was authorised to do before the passing of those Acts respectively. (See *ante*, p. 67.) This exemption was revoked, however, by 25 Vict. c. 22, s. 12. (*Hucham v. Wheeler*, 33 L. J. M. C. 153. See also 26 & 27 Vict. c. 33, s. 21; *ante*, p. 67.)

Occasional Licenses.

And it is now provided by the 25 & 26 Vict. c. 22, s. 13, that "It shall be lawful for the Commissioners of Inland Revenue whenever they shall consider it conducive to public convenience, comfort, and order, and with the consent in writing of one justice of the peace (26 & 27 Vict. c. 33, s. 20), usually acting at the petty sessions for the petty sessional division within which the place of sale is situate to authorise any officer of excise to grant to any person who shall be duly authorised to keep a common inn, alehouse, or victualling house, and who shall have taken out the proper excise licenses to sell therein beer, spirits, wine, or tobacco, an occasional license under this Act empowering him to sell the like articles for which he shall have taken out such licenses as aforesaid at such other place and for and during such space or period of time not exceeding three consecutive days at any one time as the said commissioners shall approve, and as shall be specified in such occasional license, and any person who shall have taken out such occasional license shall not be liable to any penalty or forfeiture whatever by reason or on account of his selling the articles mentioned in the said license during the time and at the place specified therein, provided that no such occasional license shall authorise the sale of beer, spirits, or wine, except during the hours extending from sunrise to one hour after sunset (26 & 27 Vict. c. 33, s. 20). And that upon the occasion of any public dinner or ball it shall be lawful for the person who shall have obtained an occasional license under the provisions of the above Act to sell the said liquors during such hours before or after sunrise or sunset as shall be allowed and specified in that behalf in the consent to be given by the justice of the peace for the granting of such occasional license (26 & 27 Vict. c. 33, s. 20); and provided that the said license shall not protect any such person in the sale of any of the articles herein mentioned, unless he shall, at the time of such sale, produce such license when requested to do so by any officer of excise or by any

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

As to selling wine by master, wardens, freemen, and commonalty of the Vintners of the City of London.

Persons selling beer in booths, &c., during a fair.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

constable or police officer. Nor shall any such license be granted for the sale of the articles therein mentioned on any Sunday, Christmas day, or Good Friday, or on any day appointed for a public fast or thanksgiving."

(3.) RULES FOR INTERPRETATION OF 9 GEO. IV. c. 61.

Rules for interpretation of Act,
9 Geo. IV. c. 61.

In order to remove doubts as to the meaning of certain words in this Act, the 37th section of the Act, after reciting to that effect, enacts; "That the word 'justice' shall be deemed to mean justice of the peace; and that the words 'treasurer of the county or place' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of monies from and out of which the cost of public prosecutions have been usually defrayed; that the words 'peace officer' shall be deemed to include any petty constable, tithing-man, headborough, beadle, or bailiff; that the words 'parish officer' shall be deemed to include any churchwarden, or chapel-wardens, or overseers of the poor; and that the said words 'justice,' 'treasurer of the county or place,' 'peace officer,' 'parish officer,' and the words 'high constable,' and the words 'petty constable,' and the words 'overseer of the poor,' and the words 'clerk of justices,' shall each be deemed to include any person acting as such, and any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and the word 'high constable' shall include any constable of any borough having a separate commission of the peace to whom the justices of the same borough may direct their precept or precepts under this Act, although such borough may not have a separate court of quarter sessions (24 & 25 Vict. c. 75, s. 2); and that the word 'person,' and the word 'party,' shall be deemed to include any number of persons and parties; and that the meaning of the aforesaid several words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only; and that the word 'notice,' and the word 'license,' and the word 'adjournment,' and the word 'day,' and the word 'time,' and the word 'house,' and the word 'place,' shall each be deemed to include any number of notices, licenses, adjournments, days, times, houses, or places; and that the word 'county,' and the words 'county or place,' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate or borough, having a separate commission of the peace, although it may not have a separate court of quarter sessions (24 & 25 Vict. c. 75, s. 2); and the words 'division or place' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word 'inn' shall be deemed to include any inn, alehouse, or victualling-house; and that the words 'inn, alehouse, or victualling-house,' shall be deemed to include all houses in which shall be sold by retail any exciseable liquor, to be drunk or consumed on the premises; and that the words 'exciseable liquor' shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise; and that the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only."

(4.) PLACES WHICH REQUIRE THE LICENSE.

3. Magistrates' License for, &c.

It does not appear that a magistrates' license under this Act of 9 Geo. IV. is required for the keeping of a house of any particular denomination, the necessity for such license depending on the sale or disposal for consideration of exciseable liquors by retail to be consumed in the house. If such liquors are so sold or disposed of by retail, to be drunk or consumed on the premises, such house is an inn, alehouse, or victualling-house, within the meaning of the 9 Geo. IV. c. 61, and requires a license. (See 1 *Hawk. c. 32, s. 4*.)

9 Geo. IV. c. 61.
Places which
require a license.

It seems, indeed, that a house in which persons board and pay a sum certain in respect of their entertainment, whether by the day or week, or any longer period, without relation to any quantity of any exciseable liquor with which they may be supplied, does not require a license; and it has accordingly been determined on prior statutes, that houses at Epsom, where they take in lodgers and boarders, coming to drink the waters there during the season, and dress victuals, and sell them ale and beer, and entertain their horses at 8*d.* a day, but sell to no other persons, are not inns nor alehouses requiring a magistrates' license. (*Parker v. Flint*, 12 *Mod.* 254; *Salk.* 287; *Carth.* 417; 1 *Ld. Raym.* 479, *S. C.*)

We have already seen, (*ante*, p. 92,) the 9 Geo. IV. c. 61, s. 36, does not affect the two Universities.

The annual Mutiny Act generally enacts, that when any persons shall hold any canteens under proper authority of the Board of Ordinance, it shall be proper for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit license to such persons without regard to the time of year or to the notices or certificates required by an Act in respect of such licenses; and the commissioners of excise, or their proper officers, within their respective districts, shall also grant such licenses as aforesaid, and such persons so holding canteens and having such licenses may sell therein victuals and exciseable liquors as empowered by such excise license, without being subject to any penalty or forfeiture.

Universities.

Canteens.

(5.) WHO MAY OR WHO MAY NOT OBTAIN A LICENSE.

At common law any person may keep an inn or alehouse, and by 9 Geo. IV. c. 61, s. 1, *infra*, a license for selling wines and spirits, &c., may be granted to any one whom the magistrates may in their discretion deem fit and proper.

Who disqualified
from having
license.

But the 9 Geo. IV. c. 61, s. 16, enacts, "That no sheriff's officer, or officer executing the legal process of any court of justice in any county or place, shall be capable of receiving or using any license under this Act; and that every license granted or transferred to any person exercising any such office shall be void to all intents and purposes."

Sheriff's officers,
&c.

And sect. 21 provides, as a punishment for offences against the tenor of licenses, that, "If the license of such offender shall be so (as therein mentioned) adjudged void, such offender shall, from and after such last-mentioned adjudication, be deemed and taken to be incapable of selling exciseable liquors by retail in any inn kept by him for the space of three years, to be computed from the time of such adjudication, and any license granted to such person during such term, shall be void to all intents and purposes." See the section in full, *post*, p. 107.

When license
void.

Sect. 17 enacts, "That no license for the sale of any exciseable liquors by retail, to be drunk or consumed on the premises of the

No excise license
to be granted,
except to a

3. Magistrates' License for, &c.

9 Geo. IV. c. 61.
person licensed
under 9 Geo. IV.
c. 61.

Licensee may
carry on the
business for
another person.

person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a license under this Act, and which said license of such justices shall be retained by such person after being produced to the commissioners or officers of excise; and every license granted by the commissioners of excise, or by any officers of excise, contrary to this provision, shall be null and void to all intents and purposes."

It may be here observed, that there is no enactment which prevents the licensee from carrying on the business for the benefit of another. (See *Brooker v. Wood*, 3 Nev. & Man. 96; 5 B. & Adol. 1052, S. C.)

(6.) PROCEEDINGS BY PARTY BEFORE APPLYING FOR THE LICENSE.

Notice to be
given by appli-
cant to keep an
inn, not before
kept as one

Form of notice.

Certificates.

By 9 Geo. IV. c. 61, s. 10, "Every person intending to apply for a license to sell exciseable liquor by retail, to be drunk or consumed in any house *not theretofore kept as an inn*(a), shall affix or cause to be affixed a notice on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, on three several Sundays, between the first day of January and the last day of February, in the counties of Middlesex and Surrey, and elsewhere between the first day of June and the last day of July, at some time between the hours of ten in the forenoon and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or other peace officers of the said parish or place, within the month of February, in the counties of Middlesex and Surrey, and elsewhere within the month of July, prior to the general annual licensing meeting; and every such notice, and the copies thereof, shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed, marked A. (b), and shall be signed by the party intending to make such application, or by his agent thereunto authorised, and shall set forth the situation of the house in a true and particular manner, and the christian and surname of the party applying, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice, and his intention to apply for a license to sell exciseable liquor by retail, to be drunk or consumed in such house or premises."

The former enactments, (26 Geo. II. c. 31, s. 2,) and law relative to the obtaining of certificates from the parson, &c., is no longer in force, being repealed by the 9 Geo. IV. c. 61. The 7 & 8 Geo. IV. c. 77, is expired. (See *R. v. Young*, 1 Burr. 557.)

(7.) LICENSING MEETING, WHEN AND WHERE, AND HOW HELD.

Licensing
meetings.

A general
licensing meeting
to be held
annually.

It will now be expedient to inquire as to the time when and place where a party is to apply for a license.

The 1st sect. of the 9 Geo. IV. c. 61, enacts, "That in every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county, not being within any such division, and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate, in that part of the

(a) See the form of the notice given by the Act, *post*, No. 30.

(b) See the form (No. 20), *post*.

United Kingdom called England, there shall be annually holden a special session of the justices of the peace, (to be called the General Annual Licensing Meeting,) for the purpose of granting licenses to persons keeping or being about to keep inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified; and that such meetings shall be holden in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on some day between the twentieth day of August and the fourteenth day of September inclusive; and that it shall be lawful for the justices acting in and for such county or place, assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licenses, for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper." (a)

By sect. 2, "In every such division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place, (b) the majority of whom then present shall, by a precept (c) under their hands, appoint the day, hour, and place, upon and in which such general annual licensing meeting for such division or place shall be holden; and shall direct such precept to the high constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order (d) the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a license to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice."

It had been decided by the Court of Queen's Bench, that the justices of a borough or town corporate are only entitled to hold an annual licensing meeting under the above 1st and 2nd sections, where the town corporate has a separate court of quarter sessions, notwithstanding that the justices had a separate commission of the peace; (*Candlish v. Simpson*, 1 B. & S. 357; 30 L. J. M. C. 178;) but the Court of Common Pleas had previously held otherwise, (*Brown v. Nicholson*, 5 C. B. N. S. 468; 28 L. J. M. C. 49,) whilst the Court of Crown Cases Reserved had in a prior case taken the same view as the Court of Queen's Bench; (*Reg. v. Dale*, 1 Dears. C. C. 37; 22 L. J. M. C. 44;) but these

3. Magistrates' License for, &c.

9 Geo. IV. c. 61.

Time of holding in Middlesex and Surrey.

In other counties.

Licenses to be granted at such meeting.

Mode of convening meeting;

a petty session to appoint it.

Notice of meeting.

A town corporate, what.

(a) By the 26 Geo. II. c. 31, s. 4, (now repealed by above Act,) no ale license could be granted but on the 1st September yearly, or within twenty days after; and by section 16, alehouses in cities and towns corporate were excepted; but by 3 Geo. IV. c. 77, s. 7, (now expired,) all general annual meetings for granting licenses as well in cities and towns corporate as in all other places in England, should be held in the month of September, yearly, it was held in *R. v. Justices of Surrey*, 2 D. & R. Mag. Ca. 435, that the effect of this clause was

not to repeal the general provisions of the former statute, but to extend its operation to cities and towns corporate only.

(b) Under the prior Act it was considered that any justice of a county going to the meeting in the division was, for the purposes of the Act, (26 Geo. II. c. 31, s. 4,) a justice of division. (*R. v. Price, Cald*, 305, per *Ashton, J.* See rules for interpretation of Act, ante, 94.)

(c) See the form (No. 28), post.

(d) See the form (No. 29), post.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

High constable, who.

Adjournment.

Manner and place of holding meeting; sessions must be public.

doubts are now set at rest by the 24 & 25 Vict. c. 75, (the Municipal Corporations Amendment Act, 1851,) which, in section 2, after reciting that doubts have arisen whether boroughs having separate commissions of the peace, but not having separate courts of quarter sessions, are "towns corporate" within the meaning of the Act 9 Geo. IV. c. 61, s. 2, so as to give the justices of such boroughs control over the granting or withdrawing licenses, and it is desirable that such doubts should be removed, declares that in the construction of the last-mentioned Act, the words "town corporate" and the words "county or place," and the words "division or place," include every borough in England having a separate commission of the peace, although it may not have a separate court of quarter sessions; and that the words "high constable," when used in the same Act, include any constable of any such borough to whom the justices of the same borough may direct their precept or precepts under the same Act; and that all licenses hitherto granted, and all transfers of licenses hitherto made in pursuance of the same Act, or of the Act 5 & 6 Vict. c. 44, or any other Act, by the justices of any such borough, are hereby declared to be valid and effectual to all intents and purposes."

As to the adjournment of meetings, see ss. 3, 5, *post*, 100.

As to the sessions for the transfer of licenses, see s. 4, *post*, 103.

As to the transfer of licenses at a petty session, *post*, 101.

Lord Kenyon, in *R. v. Downes*, 3 *Term Rep.* 569, observed, that it was of importance to the public, that licenses of this sort should be granted openly and not by stealth, in order that they may have an opportunity of objecting to the granting of these licenses to particular persons on the ground of unfitness; and the license in that case having been granted by two magistrates at a *private meeting*, and which was also holden after the general meeting had passed; it was held illegal, and would not protect the party from the penalty for selling beer, &c. without a justices' license.

(8.) WHAT JUSTICES TO ATTEND THE MEETING—PROCEEDINGS AT, TO OBTAIN LICENSE—ADJOURNMENT OF MEETING.

We shall consider this branch of the subject in the following order: *viz.* as to what justices may act, or not,—the presence of the applicant,—the grant or refusal of the license,—and the adjournment of the meeting.

What justices may act.

We have already seen that the first section of the 9 Geo. IV. c. 61, enacts, that the justices acting in and for the county or place wherein the meeting is held, not being disqualified, may grant the required license as they in the execution of the Act and in their discretion shall think fit. (*Ante*, 96.)

What justices may not act.

All justices who are interested or who may be reasonably supposed to be so, are prohibited from acting in or being present at the meeting by the 6th section of the 9 Geo. IV. c. 61, which enacts, "That no justice who shall be a common brewer, distiller, maker of malt for sale, or retailer of malt or of any exciseable liquor, or who shall be concerned in partnership with any common brewer, distiller, maker of malt for sale, or retailer of malt, or of any exciseable liquor, shall act in or be present at any general annual licensing meeting, or at any adjournment thereof, or at any special session for granting or transferring licenses under this Act, or shall take part in the discussion or adjudication of the justices upon any application for a license, or upon any appeal therefrom; and no justice shall act upon any of the aforesaid occasions, in the case of any house licensed or about to be licensed under this Act, of which such justice shall be the owner, or for the owner of which he shall be manager or agent, or of any house being in whole or in part the property of any common brewer, distiller, maker of malt for sale, or retailer of

malt or of any exciseable liquor, to whom such justice shall be, either by blood or by marriage, the father, son, or brother, or of whom such justice shall be the partner in any other trade or calling; and that every justice who, being hereby disqualified, shall knowingly or wilfully so offend, shall for every such offence forfeit and pay the sum of one hundred pounds: provided always, that nothing herein contained shall extend to disqualify any justice, (not otherwise disqualified, and having no beneficial interest in the house licensed or about to be licensed under this Act,) from acting on any of the occasions aforesaid, by reason of the legal estate in such house being vested in him as trustee for any person or persons, or for any charitable or public use or purpose whatsoever."

The county justices are, by the 7th section of the Act, empowered to attend and act at the meeting where holden for a corporate or inferior jurisdiction, where there are not two justices present who are legally competent to act. The section enacts as follows: "That whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof, not as hereinbefore disqualified, who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against this Act; any law, custom, or usage to the contrary notwithstanding."

But by the 8th section the *cinque ports* are exempted from this last provision. The section enacts, "That nothing herein contained shall extend to give the justices of the county, or any division thereof, any power or authority for the putting of the provisions of this Act in execution within any of the *cinque ports* or either of the two ancient towns, or any of the corporate or other members or liberties of the *cinque ports* or two ancient towns; but that it shall be lawful for the justices of and for each of the principal *cinque ports* and two ancient towns, and not as hereinbefore disqualified from acting, and none other, to act within and for the same, and the liberties thereof, not corporate, respectively, as they have been accustomed, and for them or any of them (not so as last aforesaid disqualified) to act within each of the corporate members immediately belonging or subordinate to such principal *cinque port* or ancient town, with the justice or justices of each such corporate member, (not so as last aforesaid disqualified,) for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against this Act, in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate."

When the county justices and justices of another jurisdiction have concurrent authority over the same place, whichever set first appoints a meeting for granting ale licenses for such place has so far assumed jurisdiction over that subject, that although it seems that the other set may join in that assembly, and act with them, they cannot appoint a subsequent separate meeting. If they do, and there grant licenses, not only are their proceedings illegal and void, but they are liable to be indicted, or a criminal information may sometimes be obtained against them. (*R. v. Sainsbury*, 4 Term Rep. 451.)

We have already seen the meeting must be public, and not in private, ante, 97. (*R. v. Downes*, 3 T. R. 569.)

Regularly the applicant should appear before the justices in person. The following provision, however, is to be found in 12th section of the

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.
Penalty for acting.

County justices to act in corporate jurisdictions where not two qualified justices.

But *cinque ports* exempted from this provision.

Where a concurrent jurisdiction.

Publicity of meeting.

Presence of applicant.
When prevented by illness, &c.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

9 Geo. IV. c. 61, dispensing with such presence in certain cases, viz.: "That if any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of this Act, or for the transfer of any such license, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such license to such person so hindered from attending, and to deliver the same to any person then present, who shall be duly authorised by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause."

Adjournment of annual meeting.

The 3rd section of the 9 Geo. IV. c. 61, gives a power of *adjourning* the general annual licensing meeting as follows: "That it shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license: provided, nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of March in the counties of Middlesex and Surrey, and of August or September in every other county."

When to be held.

Notice of adjournment.

A notice of the adjournment must be given, the 5th section of the Act enacting, "That whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour, and place for holding every such adjourned meeting, and every such special session, shall be appointed by precept of the majority of the said justices, directed to the high constable (a), requiring notices, similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties."

(9.) LICENSE, HOW GRANTED, FORM, EFFECT AND DURATION OF.

Grant or refusal of license. Questions to be decided and license to be signed by majority of justices.

The 9th section of the 9 Geo. IV. c. 61, enacts, "That when (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any license, or the fitness of the person applying for such license, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices, not disqualified, who shall be present when such question shall arise; and every license granted under the authority of this Act shall be signed by the majority of the justices not disqualified, who shall be present when such license shall be granted."

We shall hereafter see what discretion the magistrates may adopt in the grant or refusal of a license, and the remedies on an improper *refusal*, or for an improper *grant*. No condition can be annexed to the grant, *post*, 118.

(a) Or other constable of a borough under 24 & 25 Vict. c. 75. See the forms, *post* (Nos. 28, 29).

As to the fees for granting, see *post*, 105.

The form and duration of the license are pointed out by the 13th section of the 9 Geo. IV. c. 61, which enacts, "That every license which shall be granted under the authority of this Act shall be according to the form in the schedule hereunto annexed (marked C. (a)), and shall be in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and every license for the purposes aforesaid, which shall be granted at any other time or place, or in any other form than that hereby directed, except as hereinafter excepted, shall not entitle any person to obtain an excise license for selling exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes."

By 6 Geo. IV. c. 81, s. 23, where the retail beer license has become void by conviction, as mentioned in s. 22, *ante*, 70, the retail spirit license shall become void also. The enactment is, "That where the license for the sale of beer, cider, or perry by retail, to be drunk or consumed upon the house or premises of the person or persons to whom the same is granted, shall become void, and the person or persons thereupon disabled in such manner as before-mentioned by this Act; the license for the sale of any spirits, or foreign wine or sweets, or made wines or mead, or metheglin, by retail, to be drunk or consumed upon the house or premises thereupon granted, shall become null and void also to all intents and purposes; and in such case if the person or persons to whom the same respectively were granted shall sell any spirits, or any foreign wine, or any sweets, or made wines, or any mead, or metheglin respectively, by retail, to be drunk or consumed upon the house or premises after such conviction as aforesaid shall have taken place in manner before-mentioned in this Act, and every such license as aforesaid has thereby become void, such person or persons shall incur the penalty for selling spirits or foreign wines, or sweets or made wines, or mead or metheglin, to be consumed upon the premises, by retail, without license; and in all such cases, in the prosecution for the recovery of such penalty as aforesaid, such conviction shall be proved in such and the like manner as before specified by this Act in a prosecution under similar circumstances for the sale of beer, cider, or perry, by retail, to be drunk or consumed on the house or premises without license."

The 24th section of the same Act points out in what cases, upon the expiration of a magistrate's license to keep a public house within the year, the proportional parts of duties on excise licenses are to be returned. (See "*Excise*," Vol. II.)

3. Magistrates' License for, &c.

5 & 6 Vict. c. 44.
Form and duration of license.

No other license to entitle a party to excise license to retail exciseable liquors.

Where retail beer license is void by conviction, retail spirit license void also.

Selling spirits, &c., after such conviction.

Penalty.

(10.) THE TRANSFER OF LICENSE, AND GRANT OF FRESH LICENSE IN CASE OF REMOVAL, DEATH, OR OTHER CONTINGENCY.

In order to facilitate the *transfer* of licenses at any time of the year, the 5 & 6 Vict. c. 44, intituled "*An Act for the Transfer of Licenses and Regulation of Public Houses*," (1st July, 1842,) enacts, "That from and after the passing of this Act, at any petty session of justices of the peace holden in and for any division of every county and riding, and in any hundred of every county not being within such division, and in every liberty, city, town, or place within which any inn, ale-house, or victualling-house shall be situated, and for which the said justices shall be acting, at any time when no special session shall be holden for any such division, hundred, liberty, city, town, or place, it shall be lawful

5 & 6 Vict. c. 44.
Empowering transfer of licenses by justices at petty sessions.

3. Magistrates' License for, &c.

5 & 6 Vict. c. 44.

By indorsement on the license.

Excise licenses also to be transferred to same person by indorsement. To continue in force until the next special session.

The aforesaid provisions not to extend to the metropolitan police district, except Southwark.

And the application to be made to a magistrate of such district.

Transferree liable to all provisions and penalties of Acts then in force.

When licenses are lost a copy may be indorsed and considered valid.

in those cases where justices of the peace assembled at a special session are empowered by an Act passed in the ninth year of the reign of King George the Fourth, intituled, '*An Act to regulate the granting of Licenses to Keepers of Inns, Ale-Houses, and Victualling-Houses in England,*' to transfer or grant licenses, before the expiration thereof, to sell exciseable liquors by retail in the same house or premises in respect of which any person had been theretofore duly licensed, for the majority of the justices then present, upon application made to them at any such petty session, by indorsement under their hands and seals on any license which shall have been granted pursuant to the provisions of the said Act at any general licensing meeting, or at any adjournment thereof, to authorise (if they shall deem it proper so to do, after examining upon oath all necessary parties) any person not disqualified by the said Act, to whom it shall be proposed at the time of such application to transfer or grant any such license, to use, exercise, and carry on the business of a licensed victualler at the same house and on the same premises, and there to sell such exciseable liquors as might theretofore have been lawfully sold and retailed therein; and thereupon it shall be lawful for the officer of excise empowered to transfer licenses by indorsement on the excise licenses required to be transferred to give the like authority to the persons so authorised by the magistrate or justices; and the authority so granted shall continue and be in force until the then next ensuing special session which shall be holden for the division, hundred, liberty, city, town, or place within which such house or premises shall be situated, and no longer; at which special session then and there assembled, upon application made to them pursuant to the said Act, touching any transfer or grant of license to the party or parties to whom such authority shall have been so given at petty sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said Act: provided always, that nothing herein contained shall be construed to empower any justices at petty sessions to give any such authority as aforesaid within any of the divisions assigned or to be assigned to any of the police courts already established or to be established within the metropolitan police district, except in the borough of Southwark; but that any such application as is hereinbefore directed to be made at petty sessions shall, when the house and premises in respect whereof any license shall have been obtained under the said Act shall be situated within any of the said police court divisions, and not in the borough of Southwark, be made to one of the police magistrates sitting at any of the said courts, and such magistrate shall in his discretion grant such authority in the manner and for the time hereinafter mentioned: provided also, that any person or persons who shall be authorised, under the provisions of this Act, to continue to carry on the business of a licensed victualler, shall, after the obtaining such authority, and so long as the same shall continue in force, be subject to all the powers, regulations, proceedings, penalties, and provisions declared by or contained in any Act or Acts in force touching the regulation, government, or control of licensed keepers of inns, ale-houses, and victualling-houses, in like manner as if the same had been repealed and re-enacted, and that all penalties and forfeitures imposed by any such Act or Acts shall be applied as directed by the same respectively."

Sect. 2. "That whenever it shall be proved to the satisfaction of any such magistrate or justices at petty sessions, upon any application made as aforesaid, that any license granted pursuant to the said Act passed in the ninth year of the reign of King George the Fourth has been lost or mislaid, it shall and may be lawful for the said magistrate or justices to receive a copy of such license, certified to be a true copy under the hand of the clerk to the licensing justices by whom the said license shall have been granted, and to make such indorsement thereon as he or they might make under the provisions of this Act upon

the original license; and such indorsement upon the copy so certified shall be as valid and effectual as if the same had been made upon the said license."

Sect. 3. "That for every such certified copy and every such indorsement a fee of two shillings and sixpence, and no more, shall and may be demanded and taken."

Sect. 4. "That no justice of the peace shall act upon any application which shall be so made at petty sessions as aforesaid who now is or shall be disqualified by law from acting in or being present at any general annual licensing meeting, or any adjournment thereof, or at any special session for granting or transferring licenses to sell exciseable liquors; and that every justice who, being so disqualified, shall wilfully offend against this provision, shall be liable to the same penalty and proceedings for the recovery thereof as are specified and directed by the said Act of the ninth year of the reign of King George the Fourth." (As to what justices are disqualified under the 9 Geo. IV., see *ante*, 98.)

By the 9 Geo. IV. c. 61, s. 4, it is enacted, "That the justices assembled at the general or quarter session which shall be holden at Michaelmas next after the passing of this Act, and at the general annual licensing meeting in every subsequent year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden, in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant; at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns, as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises."

By sect. 11, "Every person holding a license under the authority of this Act, or his heirs, executors, administrators, or assigns, being desirous to transfer such license to some other person, and intending to apply at the special session then next ensuing for permission so to do, shall, five days at the least prior to such special session, serve a notice of such his intention upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish or place in which the house kept by the person so holding such license is situate; and every such notice shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed, marked B. [*post*, No. 31], and shall be signed by the party intending to make such application, or by his agent thereunto authorised, and shall set forth the christian and surname of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice."

As to what justices may act or not in the transfer of licenses, see *ante*, 98; as to the presence of the applicant, and when dispensed with, see *ante*, 99.

In cases where there is a compulsory change of tenancy, as by death, bankruptcy, &c., or the tenant yields up the premises, or where the tenant about to quit has neglected to renew the license, the 14th section of the 9 Geo. IV. c. 61, provides for the granting of fresh licenses. It is thereby enacted, "That if any person duly licensed under this Act shall (before the expiration of such license) die, or shall be, by sickness, or other infirmity, rendered incapable of keeping an inn, or shall become bankrupt, or shall take the benefit of any act for the relief of insolvent debtors; or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from

3. Magistrates' License for, &c.

5 & 6 Vict. c. 44.
Fee for indorsing the copy.

Disqualified justices not to act at petty sessions.

Special sessions for the transfer of licenses.

Notice of application to transfer

Other proceedings.

Fresh licenses on compulsory change of tenancy by death, bankruptcy, &c.

On removal of tenant

3. *Magistrates' License for, &c.*

5 & 6 Vict. c. 44.

On neglect of outgoing tenant to renew.

On pulling down of house.

In case of fire, accident, &c.

New license to be granted, to whom.

Duration of such license.

Notices required.

or yield up the possession of the house specified in such license; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted, or shall have neglected to apply, at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell exciseable liquors by retail, to be drunk or consumed in such house; or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any Act for the improvement of the highways, or for any other public purpose; or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn; it shall be lawful for the justices assembled as aforesaid at a special session, holden under the authority of this Act, for the division or place in which the house so kept or having been kept shall be situate, in any one of the above-mentioned cases, and in such cases only, to grant to the heirs, executors, or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent, or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators, or assigns shall by sale or otherwise have *bond fide* conveyed or otherwise made over his or their interest in the occupation and keeping of such house, a license to sell exciseable liquors by retail, to be drunk or consumed in such house, or the premises thereunto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways, or for any other public purpose, or have become unfit for the reception of travellers, or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house, a license to sell exciseable liquors by retail, to be drunk or consumed therein: provided always, that every such license shall continue in force only from the day on which it shall be granted until the fifth day of April or the tenth day of October then next ensuing, as the case may be: provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session for a license to sell exciseable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging (in which exciseable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a license granted at the general annual licensing meeting next before such special session), shall, on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, such and the like notice [see form, (No. 30), *post*.] as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a license to sell exciseable liquors by retail, to be drunk or consumed in a house not heretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor, and on one of the constables or other peace officers of such parish or place."

Where G., the licensed keeper of a public house, sold the lease of it to N., who entered into the occupation of it, the license still remaining in the name of G.; and a quantity of spirits, which required a permit for its removal under 2 Will. IV. c. 16, was supplied by a distiller on the order of N., and delivered on the premises in question: it was held, that a permit made out in the name of G. was a valid permit under the statute. (*Nicholson v. Hood, 9 Mee. & W. 365.*)

(11.) FEES FOR GRANTING THE LICENSE.

By the 9 Geo. IV. c. 61, s. 15, "It shall be lawful for the clerk of the justices, as well at the general annual licensing meeting as also at any special session to be holden under this Act, to demand and receive from every person to whom a license shall be granted under this Act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more: *videlicet*, for the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the license, the sum of five shillings; and for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, as required by this Act, the sum of one shilling and sixpence; and every such clerk, who shall demand or receive from any person for such respective fees in this behalf any greater sum or any thing of greater value than the sums hereinbefore specified, being in the whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds." (See *post*, 111, as to the recovery, &c., of the penalty.)

Where the mayor of an ancient borough, in which he was also a justice of the peace, took a fee of 4s. from a publican resident within the borough, for renewing his annual license; and though it appeared that for fifty-seven years a similar fee had been uniformly received by the mayor, for the time being, from every publican residing within the borough, applying to have his license; it was held, that such fee was illegal, and might be recovered back in *assumpsit* for money had and received, without notice of action. (*Morgan v. Palmer*, 2 Dowl. & R. Mag. Ca. 232; 2 B. & Cres. 729; 4 D. & R. 283, S. C.)

See the 5 & 6 Vict. c. 44, s. 3, as to fees for copies of lost licenses, *ante*, 103.

3. Magistrates' License for, &c.

9 Geo. IV. c. 61.
Fees to be paid
for licenses.

Penalty for ex-
tortion.
Action to recover
back fee improp-
erly paid.

Copies of lost
licenses.

(12.) PENALTY, &c., FOR SELLING WINE AND SPIRITS, &c., WITHOUT A MAGISTRATES' LICENSE.

The 9 Geo. IV. c. 61, s. 18, imposes a penalty on a party selling any exciseable liquor to be consumed on his premises, not being duly licensed. The following is the enactment, viz., "That every person who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, any exciseable liquor by retail, to be drunk or consumed in his house or premises, or shall permit or suffer any exciseable liquor to be sold, bartered, exchanged, or otherwise disposed of for valuable consideration, by retail, to be drunk or consumed in his house or premises, *without being duly licensed so to do*; and that every person, being duly licensed, who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, or shall permit or suffer to be sold, bartered, exchanged, or otherwise disposed of for valuable consideration, any exciseable liquor by retail, to be drunk or consumed in his house or premises, not being the house or premises specified in such license; shall respectively for every such offence, on conviction (a) before one justice, forfeit and pay any sum not exceeding twenty nor less than five pounds, together with the costs of the conviction: provided always, that no penalty for such sale, barter, exchange, or other disposal of any such liquor by retail without license, shall be incurred by the heirs, executors, administrators, or assigns of any person licensed under this Act, who shall die, become bankrupt, or take the benefit of any Act for the

Penalty for
selling ale, &c.,
without a jus-
tices' license.

Proviso in cas
of death, &c.

(a) See the form (No. 36), *post*.

3. Magistrates' License for, &c.

9 Geo. IV. c. 61.

relief of insolvent debtors, before the expiration of his license, so as such sale, barter, exchange, or other disposal of such liquor, be made in the house or premises specified in such license, and take place prior to the special session then next ensuing, unless such special session shall be holden within fourteen days next after the death, bankruptcy, or insolvency of the said person, and in any such case to the special session which shall be holden next after such special session aforesaid."

A man who acts *bonâ fide* under a magistrates' license, appearing to be properly signed, cannot be fined, because it may appear that the signatures to the magistrates had not been properly obtained. (*R. v. Minshull*, 1 N. & M. 277.) Prior to this, it had been doubted, without being decided, whether the penalty of keeping an alehouse without a license be incurred by a person acting under a license which is void from an irregularity in the jurisdiction of the magistrates who granted it. (*Cald.* 305, 306, n. (10); *R. v. Bryan*, *Andr.* 81; *Paley on Conv.* by *Macnamara*, 5 ed. 143, n.)

Exciseable Liquor.

Sweets or made wines are not exciseable liquors within this section since the 4 & 5 Will. IV. c. 77. (*Lancashire v. Staffordshire JJ.*, 26 L. J. M. C. 171; *sub nom. Reg. v. Lancashire*, 7 E. & B. 839.) Exciseable liquors were then defined to be liquors subject to the duties of excise, and a distinction was taken between those duties and the retail duty on a license to vend them.

Penalty of 20l. under 35 Geo. III. c. 113. (a)

The 35 Geo. III. c. 113, appears to be still in force, (b) and comprehends a greater punishment than the above provision, though now rarely if ever acted upon. It is not an excise law, and provides a penalty of twenty pounds for selling exciseable liquors without a magistrates' license. (See *R. v. Hanson*, 4 Barn. & Ald. 519; *R. v. Drake*, 6 M. & Sel. 116.) The enactment is as follows:—Sect. 1. "If any person shall sell ale or beer, or any other exciseable liquors by retail, or shall permit or suffer any ale or beer or any other exciseable liquors to be sold by retail in his, her, or their house, out-house, or yard, garden, orchard, or other place in that part of Great Britain called England, the dominion of Wales and town of Berwick-upon-Tweed, without being duly licensed so to do, and shall thereof be duly convicted, every such person so offending shall for every such offence forfeit and pay the sum of twenty pounds, and also the costs and expenses attending the conviction, to be levied and recovered as herein is directed (c), and on and after a second conviction for the like offence, shall also be rendered incapable of being thereafter licensed to keep an alehouse, or to sell ale or beer or other exciseable liquors by retail."

Mitigation of penalty.

Sect. 14. Where it shall be proved to the satisfaction of such justice that such offender hath not been before convicted of any offence against this Act, such justice may mitigate the penalty hereby imposed, (in case of such first offence, but not otherwise,) to not less than ten pounds.

Limitation of prosecution.

Sect. 16. All penalties within this Act shall be sued for and determined within six months after the offence is committed. See also 11 & 12 Vict. c. 43, s. 11.

Recovery and application of penalties.

As to the recovery and application of the penalties, see *post*, 111; and as to appeal, see *post*, 116.

In *R. v. Drake*, 6 M. & Sel. 116, it was held that the jurisdiction of justices under the 35 Geo. III. c. 113, upon an information for selling ale by retail without a license, was not taken away by the 48 Geo. III. c. 143.

(a) See the form (No. 36), *post*.

(b) To make penalties cumulative, express words to that effect must be introduced into the Act, as in 3 & 4 Vict. c. 61, s. 17, *ante*, 77; see *Attorney-General v. Lockwood*, 9 M. & W.

378; *Henderson v. Sherborn*, 2 M. & W. 236; *Rea v. The Trustees of the North-leach and Witney Roads*, 5 B. & Ad. 978; *Barrett v. The Stockton Railway Company*, 2 Scott, N. R. 337.

(c) See *post*, 112.

In *R. v. Downes*, (3 *Term Rep.* 560,) it was held, that a person who sold spirituous liquors without a license from two justices, was liable to the penalties of the 5 Geo. III. c. 46, though he had a license from the excise to retail spirituous liquors.

By 7 & 8 Geo. IV. c. 38, constables are not to be required to make presentments respecting unlicensed alehouses.

It has been held, that a brewer who delivered beer to be used in a particular public-house on the credit of a person not the licensed keeper of the house, may maintain an action against the latter for goods sold and delivered. (*Brooker v. Wood*, 3 *Nev. & Man.* 96; 5 *B. & Adol.* 1052; *Meux v. Humphries*, 3 *C. & P.* 79; 1 *M. & M.* 132.)

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.
Presentment by constable.
Selling beer to unlicensed person.

(13.) PENALTY FOR NOT SELLING BY STANDARD MEASURES.

By 9 Geo. IV. c. 61, s. 19, "Every person hereby licensed to sell exciseable liquors by retail, to be drunk or consumed in his house or premises, shall, if required, sell or otherwise dispose of all such liquors by retail therein, (except in quantities less than a half pint,) by the gallon, quart, pint, or half pint measure, sized according to the standard, and shall also, if required by any guest or customer purchasing such liquor, retail the same in a vessel sized according to such standard; and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty days next after that on which such offence was committed, before any one justice; and such penalty shall be over and above all penalties to which the offender may be liable under any other Act." As to beer houses, see *ante*, 80.

Standard measures to be used.

(14.) PENALTY FOR NOT CLOSING PUBLIC HOUSES IN RIOTS.

By 9 Geo. IV. c. 61, s. 20, "It shall be lawful for any two justices acting for any county or place where any riot or tumult shall happen or be expected to take place, to order or direct that every person licensed under this Act, and keeping any house situate within their respective jurisdictions in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed, shall be taken and deemed to have not maintained good order and rule therein." As to the form of a conviction under this section, see *Newman v. Hardwicke*, (8 *Ad. & E.* 124, *ante*, 78.) As to beer houses, see *ante*, 78.

Justices may order licensed houses to be closed during riots.

As to refreshment houses, see *post*, tit. "*Refreshment House*," Vol. V

(15.) PENALTY AND PUNISHMENT FOR OFFENCES AGAINST THE LICENSE.

The license itself, the form of which will be found, *post*, No. 32, contains a prohibition against the commission of several offences therein specified, and the reader is referred to it to ascertain what those offences are.

Offences against license.

The 9 Geo. IV. c. 61, s. 21, enacts different degrees of punishment against publicans for offences against the tenor of their license. The enactment is as follows:—"That every person licensed under this Act who shall be convicted before two justices acting in and for the

First offence to be determined by two justices.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

Penalty for second offence in three years to be determined by two justices.

Penalty for third offence, consideration to be adjourned to next special sessions, or to general meeting.

Summons to party charged.

Recognizance by complainant and witness.

Adjudication in case of third offence. Hearing of case may be adjourned to sessions.

division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the license to him granted, shall, unless proof be adduced to the satisfaction of such justices, that such person had been theretofore convicted before two justices, within the space of the three years next preceding, of some offence against the tenor of the license subsisting at the time when such last-mentioned offence was committed, be adjudged (a) by such justices to be guilty of a first offence against the provisions of this Act relative to the maintenance of good order and rule, and to forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction.

"But if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the three years next preceding, of one offence only against the tenor of the license subsisting at the time when such last-mentioned offence was committed, such person shall be adjudged (b) by such justices to be guilty of a second offence against the provisions of this Act as aforesaid, and to forfeit and pay any sum not exceeding ten pounds, together with the costs of the conviction.

"But if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of the three years next preceding, of two separate offences against the tenor of the licenses subsisting at the times when such last-mentioned offences were committed, it shall be lawful for the said justices, and they are hereby required, to adjourn the further consideration of the charge, so made against such person as aforesaid, to the special session to be then next holden under this Act for the division or place in which shall be situate the house kept by such person, or to the general annual licensing meeting for the said division or place, if such meeting shall take place before any such special session shall be holden.

"And such justices shall issue their summons to the person so charged, to appear at such special session or at such general annual licensing meeting, then and there to answer to the matter of such charge;

"And shall bind the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof, in a sufficient recognizance to appear at such special session or at such general annual licensing meeting, then and there to prosecute and to give evidence upon such charge; and if proof shall be adduced to the satisfaction of the justices assembled at such special session or such general annual licensing meeting, that such person so charged is guilty of the offence with which he is so charged, such person shall be adjudged to be guilty of a third offence against the provisions of this Act as aforesaid, and to forfeit and pay any sum not exceeding fifty pounds, together with the costs of the conviction.

"Provided always, that if at any time before the hearing of any such last-mentioned charge, the justices assembled as aforesaid shall in their discretion think fit to direct that the hearing of such charge shall be adjourned to the general or quarter session of the peace then next ensuing, there to be inquired of by a jury, or if the person so charged shall in writing under his hand request the said justices to direct that the hearing of such charge shall be so adjourned as aforesaid, the said justices are hereby required to direct that the hearing of such charge shall be so adjourned, provided that the person who shall have made such request shall, before such justices so assembled, forthwith enter into a recognizance with two sufficient sureties personally to appear at

(a) See form of conviction, *post*, (No. 33.)

(b) See form of conviction, *post*, (No. 39.)

the said general or quarter session, and to try such charge and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded.

"And the said justices are hereby required to bind in a recognizance to appear at such general or quarter session as aforesaid, then and there to give evidence against the person so charged, the person who shall make such charge, and any person who shall have any knowledge of the circumstance thereof.

"And it shall be lawful for the said court of general or quarter session to direct a jury then and there duly impanelled to be sworn to inquire of the offence so charged to have been committed, and upon their verdict of 'guilty,' to adjudge such person to be guilty of a third offence against the provisions of this Act as aforesaid, and such verdict and adjudication shall be final to all intents and purposes; and to punish such offender by fine, not exceeding the sum of one hundred pounds, or to adjudge the license granted to and held by or on behalf of such offender to be forfeited and void, or to punish such offender by such fine as aforesaid, and to adjudge such license to be forfeited and void, and if such license shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and every excise license for selling any exciseable liquors by retail, then held by or on behalf of such offender, shall also be void; and if the license of such offender shall be so adjudged to be void, such offender shall from and after such last-mentioned adjudication be deemed and taken to be incapable of selling exciseable liquors by retail in any inn kept by him for the space of three years, to be computed from the time of such adjudication; and any license granted to such person during such term shall be void to all intents and purposes; provided also, that the court may, upon sufficient cause shown, adjourn the hearing of such charge to the then next general or quarter session of the peace, when the same shall be finally determined."

On an adjournment to the session on a charge of a third offence, the justices may order the constable or peace officer of the district to prosecute and allow him the expenses of the prosecution. The 22nd section of the 9 Geo. IV. c. 61, enacts, "that in every case in which the justices assembled at any special session or at any general annual licensing meeting shall direct that the charge against any person licensed under this Act shall be adjourned to the general or quarter session, it shall be lawful for such justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place, in which shall be situate the house kept by the person so charged, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and it shall be lawful for the justices, before whom such charge shall have been heard, to order the treasurer of the county or place in and for which such justices shall then act, to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution; which order the clerk of the peace is hereby directed and required forthwith to make out and deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to such

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.
Recognizance by party accused and sureties to appear at session.

Trial of third offence by jury.

Penalty or punishment on verdict of 'guilty.'

Sessions may adjourn hearing.

Proceedings at sessions on adjournment for third offence to be carried on by petty constable.

Expenses of such prosecution to be charged on county rates. (a)

3. Magistrates' License for, &c.

9 Geo. IV. c. 61.

constable or other peace officer, or other person authorised to receive the same, such money as aforesaid; and the said treasurer shall be allowed the same in his accounts."

(16.) COMPELLING ATTENDANCE OF WITNESSES—CONVICTION—DEFECTS IN COMMITMENT, CONVICTION, &c.—CERTIORARI.

Penalty on witnesses not attending. (a)

It must first be observed, that the provisions of the 11 & 12 Vict. c. 43, apply to proceedings under this Act.

By 9 Geo. IV. c. 61, s. 23, "If any person shall be summoned as a witness to give evidence before any justice touching any of the matters aforesaid, either on the part of the complainant or of the person accused, and shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justice, or who appearing shall refuse to be examined on oath or affirmation and give evidence, every such person shall, on conviction before such justice, forfeit and pay for every such offence any sum not exceeding ten pounds." (See the 35 Geo. III. c. 113, s. 10, *post*, 113; see also 11 & 12 Vict. c. 43.)

Conviction must be on oath.

Sect. 31. "Every conviction under this Act shall be on the oath or oaths of one or more credible witness or witnesses; and any justice, not as hereinbefore disqualified, and acting in and for the county or place in which the offence complained of shall have been committed, is hereby authorised to administer the same."

Form of conviction. (b)

Sect. 32. "In order to prevent frivolous and vexatious appeals," enacts, "That a conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence, in any more particular manner; that is to say,
'——) Be it remembered, that on this day of , in the year , to wit. } A. B. of , was duly convicted before of his Majesty's justices of the peace for the , of , for that [here state the offence, and the time and place when committed], whereby the said A. B. has forfeited the sum of , this being adjudged to be the first [or 'second' or 'third'] offence [as the case shall happen to be], against the provisions of an Act to regulate the granting of licenses to keepers of inns, alehouses, and victualling-houses in England, besides the costs of this conviction, which the said justices do hereby assess at the sum of , pursuant to the statute in such case made and provided. Given under hand and seal the day and year above written.'"

The form of conviction given in 11 & 12 Vict. c. 43, is also applicable. (See 11 & 12 Vict. c. 43, s. 17.)

Conviction to be returned to sessions and filed.

Sect. 33. "Every justice before whom any such conviction shall have been made shall return the same, or cause it to be returned, to the next general or quarter session of the peace holden for the county or place wherein the offence shall have been committed; and it shall be then and there delivered to the clerk of the peace, or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant on demand upon payment of a fee of one shilling, shall be legal evidence of every such conviction."

Conviction or commitment not bad for want of form. (c)

Sect. 34. "No conviction under this Act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed, by writ of certiorari or otherwise, into any of his Majesty's superior

No certiorari.

(a) See further, *post*, "Evidence," Vol. II.

(b) See in general, *post*, "Conviction."

(c) As to enactments of this nature, see *post*, "Conviction."

courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same."

And on appeal any omission or mistake in drawing up a conviction or order may be cured under 12 & 13 Vict. c. 45, s. 7.

3. *Magistrates' License for, &c.*

9 Geo. IV. c. 61.

(17.) PENALTIES HOW TO BE RECOVERED AND APPLIED.

Sect. 24. "Every penalty and forfeiture imposed by this Act upon any justice may be sued for and recovered by action of debt in any of his Majesty's courts of record at Westminster; and one moiety of every such penalty or forfeiture shall be paid to the use of his Majesty, his heirs and successors, and the other moiety to him who shall sue for the same." (See s. 6, *ante*.)

Penalties on justices, how recovered, &c.

Sect. 25. "In every case in which, under the authority of this Act, any justice shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect forthwith, or within such period as such justice shall appoint, to pay such penalty and any costs which shall have been duly assessed and ascertained by such justice, it shall be lawful for such justice, if he shall think fit, to issue his warrant, and to levy the amount of such penalty and costs by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justice that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justice to commit (b) the offender to the common gaol or to the house of correction of the county or place for which such justice shall be then acting, for any term not exceeding one calendar month, if the penalty shall not be above five pounds; for any term not exceeding three calendar months, if the penalty shall be above five pounds, and shall not be more than ten pounds; and for any term not exceeding six calendar months, if the penalty shall be above ten pounds: provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction, in consequence of his not having duly paid such penalty and costs, such offender shall, if he pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justice shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him, and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, be forthwith discharged."

Other penalties, how recovered.

Distress. (a)

Imprisonment.

Discharge on payment of penalty.

By the 28 & 29 Vict. c. 127, (The Small Penalties Act, 1865,) when upon summary conviction any offender may be adjudged to pay a penalty not exceeding five pounds, such offender in case of non-payment thereof may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the scale set out in the section; and by sect. 6, the Act is to apply to penalties, including costs, recoverable in summary manners in pursuance of any Act of Parliament, whether passed before or after the commencement of that Act, and two months is the extreme limit of imprisonment allowed for a penalty not exceeding five pounds. (See also the provisions of 11 & 12 Vict. c. 43, *post*, tit. "*Conviction, Commitment.*")

By 9 Geo. IV. c. 61, s. 26, "It shall be lawful for any justice, before

(a) See 5 Geo. IV. c. 18, and in general, "*Warrant of Distress*," Vol. V.

(b) See in general, *post*, "*Commitment in Execution.*"

3. *Magistrates' License for, &c.*

35 Geo. III.
c. 113.

How penalties
applied.

whom any penalty shall be recovered under the provisions of this Act, to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act; and the said treasurer shall place the same to the credit of such county or place, and shall duly account for the same."

The treasurer of the "county or place" to whom a penalty is made payable under this section is the treasurer of a place having a court of quarter session; and, therefore, where a licensed person was convicted by justices holding a commission of the peace for a borough and town corporate which had no separate court of quarter sessions, and adjudged under the Alehouse Act, (9 Geo. IV. c. 61,) to pay a fine for permitting disorderly conduct in his house contrary to the tenor of his license and a moiety of the fine awarded to the prosecutor, and the defendant paid the fine to the clerk of the justices, who paid the remainder to the treasurer of the borough, it was held that the said remainder of the fine was payable by the clerk of the justices to the treasurer of the county, and not to the treasurer of the borough justices. (*Reg. v. Dale*, 1 *Dears. C. C.* 37; 22 *L. J. M. C.* 44.). But see now 24 & 25 *Vict. c. 75*, s. 4, *ante*, 94, 97.

Penalties under
35 Geo. III.
c. 113, how re-
covered. (a)

By stat. 35 Geo. III. c. 113, ss. 2, 5, which, it would seem, is still in force, though rarely if ever acted on, one justice may hear and determine the offence in a summary way, and upon information exhibited, or complaint made to him, shall summon the party accused, and also the witnesses on either side; and upon appearance, or contempt by not appearing, shall proceed to hear the matter, and examine the witnesses on oath, and give judgment therein; and upon proof of the offence either by confession, or oath of one witness, may convict the party accused; and if he, being then present, shall not at the time, or if absent, within three days after notice, either personally served upon him, or left for him at the place where the offence was committed, pay the said penalty together with the costs and expenses, to be ascertained by such justice, the same shall be levied by distress of the goods and chattels of such offender wheresoever found within the jurisdiction of such justice, or in any entered place of such offender, in the like manner as directed by 27 Geo. II. c. 20, and 33 Geo. III. c. 55, as far as the same relates to the execution of warrants of distress, as fully as if the powers of the said Acts had been repeated herein; and shall be applied half to the informer and half to the poor of the parish, township, or place in which, &c., in such manner as such justice shall direct; and if a return shall be made that sufficient distress cannot be found whereon to levy the penalty and costs as aforesaid, it shall and may be lawful for any justice of any county or place within whose jurisdiction the party offending shall be found, upon producing to him such warrant and return, (and if such justice shall be of any other county or place, then upon oath made of the handwriting of the justice granting such warrant, and of the truth of such return,) to commit such offender to the common gaol, or other prison within his jurisdiction, for any term not exceeding six nor less than three calendar months, unless such penalty and the costs of all proceedings upon the conviction and warrant be sooner paid. See also 11 & 12 *Vict. c. 43*, s. 31, tit. "*Warrant*," Vol. V.

How applied.

Sale of distress.

Sect. 3. Provided, that on the request of the owner, such distress may be sold within the four days allowed by the said Act of 27 Geo. II. c. 20, s. 3.

Allowance to per-
sons executing
warrants, &c.

Sect. 4. And there shall be allowed to the officer executing such warrant of distress, for the safe keeping of the goods distrained, such sum not exceeding 5s. per day, and for any assistant any sum not exceeding 2s. per day for each, as the convicting justice shall direct, on proof on

oath that sufficient cause existed for calling in the aid and assistance of such person or persons.

Sect. 6. And after reciting that many persons carry on the trade of alehouse-keeper and victualler, and retailer of beer and ale, without license, and make entry of places for keeping the same by assumed or feigned names, and such beer and ale is frequently retailed in houses and places detached from their places of residence, whereby the law hath been evaded, it is enacted, "that in case any summons shall be issued by any justice for any person to appear and answer to any information or complaint for selling by retail any beer, ale, or other exciseable liquors, without license, the directing such summons to such person by the name in which he made such entry, or is usually known, whether the same be his real or assumed or feigned name, and leaving such summons at such house or place where such offence is stated in the information to have been committed, and affixing a copy thereof on the door or other conspicuous part on the outside thereof, (such service being proved on oath of the person who shall have so served and affixed up such summons and copy,) shall be deemed a sufficient notice or summons to all intents and purposes."

Sect. 10. "And if any person shall be summoned as a witness, and shall neglect or refuse to appear at the time and place appointed, without a reasonable excuse, (to be allowed by such justice,) or appearing, shall refuse to be examined on oath and give evidence, he shall forfeit ten pounds, to be levied by warrant of distress, [to be applied to the poor where such offence was committed, in such manner as such justice shall direct] ; and for want of sufficient distress, such offender shall be committed by the said justice to the common gaol or other prison, for (not exceeding) six calendar months, unless such penalty shall be sooner paid." He may also be committed under 11 & 12 Vict. c. 43, s. 7, see tit. "*Commitment.*"

Sect. 11. "And if any person, after service of any summons to appear to any charge of selling ale or beer or other exciseable liquors, without license, shall convey away any goods or chattels hereinbefore made liable to distress from the house or place wherein such offence shall have been committed, or belonging thereto, or occupied therewith, or which hath been entered as aforesaid, it shall be lawful for the officer to whom such warrant is directed, or other person acting in his aid or assistance, within thirty days after such conveying away, to seize the same wherever they may be found, and dispose of them in such manner as if they had been distrained on the premises. And if carried out of the jurisdiction of the justice, who originally issued the warrant, any justice of the county, city, liberty or place into which the same shall be conveyed, is required, on proof on oath of the handwriting of such justice originally signing such warrant, to indorse his name on the back thereof, which shall be sufficient authority to any person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same, and to proceed as if such goods had been seized within the jurisdiction of the justice who signed the original warrant."

Sect. 12 gives the right of appeal, *post*, 116.

The 27 Geo. II. c. 20, and 33 Geo. III. c. 55, are repealed, so far as they relate to the execution of warrants of distress, by 11 & 12 Vict. c. 43.

3. Magistrates' License for, &c.

What a legal notice to persons summoned.

Witnesses not appearing forfeit 10*l*.

Goods conveyed away may be distrained in thirty days wherever found.

Warrants may be indorsed.

(18.) APPEAL.

By 9 Geo. IV. c. 61, s. 27, "Any person who shall think himself aggrieved by any act of any justice, done in or concerning the execution of this Act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place wherein the cause of

Appeal may be to sessions.

3. Magistrates' License for, &c.

Notice of.

Recognizance.

Costs.

Appeal against refusal to grant or transfer license.

Judgment of sessions final.

No justice to act on appeal who was a party to act complained of.

Appeal in limited jurisdiction may be to county sessions.

such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards, provided that such person shall give to such justice *notice in writing* of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a *recognizance*, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to *appear at the said session*, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet; and in case the act appealed against shall be the *refusal to grant or to transfer any license*, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or transfer such license, in the same manner as if such license had been granted at the general annual licensing meeting, or had been transferred at a special session; and the judgment of the said court shall be final and conclusive to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall if necessary issue process for enforcing such order; provided that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this Act; provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained." See as to appeals in general, *post*, "*Appeal*." Now fourteen clear days' notice of appeal in writing with grounds is necessary. (12 & 13 Vict. c. 45, s. 1, tit. "*Appeal*.")

In *Rex v. Justices of Middlesex*, (3 B. & Ad. 938,) it was held that the words in the above clause "think himself aggrieved," mean a person *immediately* aggrieved, as by refusal of a license to himself, by fine, &c., and not one who is only consequentially aggrieved: and, therefore, that where magistrates had granted a license to a party to open a public-house not before licensed, within a very short distance of a licensed public-house, the occupier of the latter house could not appeal against such grant.

As to the amendment of recognizances of appeal, see 12 & 13 Vict. c. 45, s. 8, *post*, tit. "*Appeal*."

But an appeal lies against the refusal of magistrates to grant a license who have come to the meeting with a resolution already prepared to make it a condition of their granting a license for the sale of beer that the licensee shall have taken out an excise license for the sale of spirits, and refused to grant licenses on that ground only, and as they have not exercised their discretion in a reasonable manner their decision will be reversed by the Queen's Bench on a case from the quarter sessions. (*Reg. v. Sylvester*, 31 L. J. M. C. 93; 2 B. & S. 322.)

The recorder of a borough has no jurisdiction to hear an appeal under this section against a refusal by the borough justices to grant a

license under the 9 Geo. IV. c. 61, for such jurisdiction is expressly taken away by the proviso to the 105th sect. of the 5 & 6 Will. IV. c. 76, (*Reg. v. The Recorder of Bristol*, 4 E. & B. 265; 24 L. J. M. C. 43,) but an appeal under that section against a refusal of the borough justices to grant a license under that Act may be heard at the county sessions. (*Reg. v. Deane*, 2 Q. B. 96; 10 L. J. M. C. 126.)

The court of quarter sessions are bound to hear the appeal and adjudicate thereon at the "next" session of the court, and have, therefore, no power to adjourn it. (*Reg. v. Belton*, 17 L. J. M. C. 70; 11 Q. B. 379.) Therefore, where an appeal was heard and dismissed at the next sessions, there was no power to adjourn it and make an order for costs at a subsequent sessions. (*Ib.*) Lord Denman, in giving judgment in that case said, "It might be, indeed, that at the hearing so long a time was occupied by one party as to make it necessary to adjourn. If such party occasioned such delay for his own benefit, the law would take care that the other party should have a hearing, and should not be prevented from being heard by the conduct of his opponent." (*Ib.* 17 L. J. M. C. 74.)

A licensed victualler convicted by two justices under sect. 21 (*ante*, 107) of an offence against the tenor of his license, cannot be heard on appeal to the quarter sessions under the above section, unless he has served notice of such appeal on both the convicting justices. And this, although at the time of giving notice the conviction had in fact been signed only by one justice at least, if there be no proof that the conviction so signed was communicated to the appellant before he gave notice, so that he might have been misled thereby. (*Reg. v. Cheshire Justices*, 11 Ad. & Ell. 139.)

No appeal lies to the sessions from a conviction for selling liquors without an excise license. (*Rex v. Hanson*, 4 B. & Ald. 519; *ante*, 82; *post*, "Excise," Vol. II.)

By sect. 28, "When any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice, before whom such recognizance shall have been entered into, to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter sessions, and to give evidence in such appeal; and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law."

Sect. 29. "In every case where notice of appeal against the judgment of any justice in or concerning the execution of this Act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum, by way of costs, as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever, to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to

3. Magistrates' License for, &c.

No power of adjournment.

Witnesses may be bound over.

Consequences of refusal to obey summons or enter into recognizance

Costs.

On dismissal, &c. of appeal appellant may be ordered to pay costs.

3. *Magistrates' License for, &c.*

On default of payment appellant may be committed. (a)
If judgment reversed, justices indemnified against costs.

adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and that in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice, whose judgment shall have been so reversed, shall have acted on the occasion when he shall have given such judgment, shall pay to such justice, or to whomsoever he shall appoint, such sum as shall, in the opinion of such court, be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts."

The above section 29, which gives costs on the dismissal of an appeal, or on its abandonment, or on reversal of judgment, is repealed, so far as its provisions are in conflict therewith, by the 11 & 12 Vict. c. 43, s. 27. (*Jervis's Act* relating to summary convictions and orders.) The order for costs under the latter Act may be made upon either party, and must direct them to be paid to the clerk of the peace of the quarter sessions, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid. And in case of default in payment, the order may be enforced by distress, and in default of distress, by commitment, for not more than three months. For this section, see tits. "*Appeal*," "*Conviction*."

An order, however, made under the 29th sect. directing the costs to be paid to the justices instead of the clerk of the peace, under the 27th sect. of 11 & 12 Vict. c. 43, is not void for want of jurisdiction so as to be capable of removal by certiorari where the certiorari is taken away, (*Reg. v. Binney*, 22 L. J. M. C. 127; 1 E. & B. 810,) though if such an order were removed by the other party, under the 12 & 13 Vict. c. 45, s. 18, for the purpose of being enforced, the defendant, as the party affected by it, may cause it to be set aside as erroneous by the superior court. (*Reg. v. Hellier*, 21 L. J. M. C. 37; 17 Q. B. 229.)

By the 12 & 13 Vict. c. 45, s. 5, a general power is given to quarter sessions to order costs to the successful party on all appeals, such costs to be recoverable under 11 & 12 Vict. c. 43, but such power has been held to be cumulative. (*Reg. v. Huntley*, 3 E. & B. 172; 23 L. J. M. C. 106; *Reg. v. Ely Justices*, 5 E. & B. 489, 492; 25 L. J. M. C. 1. See tit. "*Appeal*," *post*.)

By the 35 Geo. III. c. 113, s. 12, it is enacted, "that if any person shall think himself aggrieved by the judgment of such justice, he may appeal against any such conviction to the next general or quarter sessions of the peace, (and such justice shall make known to such person at the time of such conviction the right to appeal,) unless such session be holden within six days next after such conviction, and in such case to the next subsequent sessions, and not afterwards; such person at the time of such conviction giving to such justice notice in writing of his intention to appeal, and also giving security, to the satisfaction of such justice, for the payment of the penalty and costs in case such judgment be confirmed on appeal; and also further entering into a recognizance at the time of such notice, with sufficient sureties, to try the appeal, abide the judgment, and pay such costs as shall be awarded at such sessions. And the judgment of such sessions shall be final and conclusive; and if the justices at such sessions shall adjudge such appeal to be frivolous or vexatious, they may give costs to the party aggrieved by such appeal, not exceeding five pounds in the whole."

Appeal under 35 Geo. 3, c. 113, to sessions.

Notice and recognizance.

Judgment of sessions final.

Costs.

(a) See *post*, "*Commitment in Execution*."

(19.) LIMITATION OF ACTIONS AGAINST JUSTICES, &c. AND PLEA.

3. *Magistrates' License for, &c.*

Limitation of actions against justices.

General issue.

By 9 Geo. IV. c. 61, s. 30, "Every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this Act, shall be commenced within three calendar months after the cause of action of complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this Act, he may plead the general issue, and give the special matter in evidence." (See *post*, "*Justices*," Vol. III.) See now 11 & 12 Vict. c. 44, ss. 8, 9, 10, by which six months are given within which to bring an action.

As to enactments of this kind, and as to the law of actions against magistrates in general, see *post*, "*Justices*," Vol. III.

(20.) REMEDIES ON REFUSAL TO GRANT LICENSE.

We have already noticed, (*ante*, 113,) the remedy which a party has *By appeal* by *appeal* in a case of refusal to grant or transfer license.

By Mandamus.—It is discretionary in the justices whom they will license, and a *mandamus* will not lie to compel the justices to license any person; and on a conviction for selling excisable liquors without license, the want of such license could only come in question, and not the reason why it was denied. (*Giles's case*, 2 Str. 881.) Therefore, even where affidavits were offered to be produced, of the justices declaring that they would grant no licenses to any of the inhabitants who signed a petition to the parliament for erecting a workhouse there; and that the person, on whose behalf the motion was made, had been a victualler in the town for above thirty-five years, the motion was refused, (1 *Barnard*, 402; *Rex v. Young*, 1 Burr. 556,) but the justices must hear and exercise their judgment upon any application that is duly made to them for a license at their general annual licensing meeting, and they cannot refuse on the ground that they had passed a resolution not to grant any new licenses after having had laid before them the lists of applicants, containing a description of them and the situation of the houses in respect of which the licenses were sought, (*Reg. v. Justices of Walsall*, 3 Com. L. R. 100; 24 L. T. 111,) and they will be compelled by *mandamus* to hold an adjourned meeting to take such application into consideration. (*Ib.*)

But a *mandamus* was refused to command justices to hear an application for an ale license, which they had refused, though it was suggested that their refusal proceeded from a mistaken view of their jurisdiction; *et per curiam*, "It being conceded that the magistrates have heard and determined upon this application for a license, which is a matter peculiarly for their consideration, we cannot grant a *mandamus* to them to re-hear what they have already determined." (*Rex v. Licensing Justices of Ward of Farringdon Without*, 2 D. & R. Mag. Ca. 365; and see a still later case, *Rex v. Justices of Surrey*, *id.* 435. See further, *post*, "*Mandamus*," Vol. III.)

By Action.—An action is not maintainable against justices for refusing to grant a license for the same reason that a *mandamus* will not be awarded; that is, because the legislature had left the granting or refusing such license to the discretion of the justices, who are not responsible for errors in judgment; (*Bassett v. Godschall*, 3 Wils. 121, 124;) and even if they acted maliciously or corruptly, no action would lie, (See 1 Salk. 306; *Bushell's case*, *Vaughan*, 135; 5 T. R. 86,) but

3. *Magistrates' License for, &c.*

this latter proposition must be considered doubtful. (*Gelan v. Hall*, 2 H. & N. 379, S. C.; 27 L. J. M. C. 78.)

A mayor of a borough who is ex officio a justice of the peace may be sued in an action for money had and received, to recover back a fee improperly taken by such mayor for granting a license, though such fee had uniformly been taken for fifty-seven years before, and no notice of action is necessary. (*Morgan v. Palmer*, 2 B. & Cres. 729; 4 D. & R. 283, S. C.; post, "*Justices*," Vol. III.)

By indictment or information.

By Indictment or Information.—Where a magistrate acts in his office with a partial, malicious, or corrupt motive, he is guilty of a misdemeanour, and may be proceeded against by indictment or criminal information in the Queen's Bench, which exercises a general supervision over all justices of the peace. And either of these modes of proceeding may be adopted where a magistrate partially, maliciously, or corruptly refuse to grant or transfer a publican's license, provided such improper refusal can be distinctly proved or plainly inferred from the circumstances under which the magistrate acted.

It is most usual to proceed in such a case by criminal information in preference to an indictment; but sometimes where there has been delay in the application, or a jury may be more fit to apply to than the court, then an indictment should be the form of remedy. The general rules as to when an indictment or criminal information will lie against a justice of the peace, as also the mode of proceeding therein against him, and the consequences, will be found, post, "*Justices*," Vol. III.

Information for not granting.

In *Rex v. Young and Pitts*, (1 Burr. 556,) a motion was made for an information against the defendants, for arbitrarily, obstinately, and unreasonably refusing to grant a license to one *Henry Day* to keep an inn at Eversley, Wilts. Lord Mansfield, C. J., said, "It is certain that this court has no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licenses, by way of appeal from their judgments, or over-ruling the discretion intrusted to them. But if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have, consequently, abused the trust reposed in them, they are liable to prosecution by indictment or information; or even possibly by action, if the malice be very gross and injurious. If their judgment be wrong, yet their heart and intention be pure, God forbid that they should be punished." And he declared that he should always lean towards favouring them; unless partiality, corruption, or malice clearly appeared. And having gone through all the particulars, both of the charge and of the defence, he concluded with declaring it as his opinion that there was not sufficient ground for a criminal charge against these justices. *Denison*, J., said, "It must be clear and apparent partiality, or wilful misbehaviour, to induce the court to grant an information; not a mere error in judgment." And, by the court unanimously, the rule was discharged with costs.

Not so for mere error in judgment.

Justices not to annex condition to license.

In *Rex v. Athay*, (2 Burr. 653,) on showing cause why a rule should not be made absolute, for an information against a justice for a misdemeanour in refusing to grant a license to one *Francis Symes* (who had been licensed for several preceding years) to sell ale, as usual, it appeared that one of the grounds upon which the rule had been obtained was, that the only reason why the license was refused him was his declining to pay a sum of money (viz. 5*l.*) which was claimed of him upon a distinct and collateral account, and which he denied to be due from him; the payment of which sum of money was, he alleged, insisted upon by the justice, as a condition precedent to his granting the man a license. The court were unanimous, that the ground alleged appeared to be false in fact; but, at the same time, they declared explicitly that the justices have no sort of authority to annex any such conditions to the grant of these licenses.

In *Rex v. Williams and Davis*, (3 Burr. 1317,) an information was granted against the defendants, justices of the peace for the borough of Penryn, for refusing to grant licenses to those alehouse-keepers who voted against their recommendation of candidates for members of parliament for that borough. It appeared that they had acted very grossly in this matter, having previously threatened to ruin these people, by not granting them licenses, in case they should vote against those candidates whose interest these justices themselves espoused, and having afterwards actually refused them licenses upon this account only. And Lord Mansfield declared that the court granted this information against the justices, not for the mere refusal to grant the licenses, (which they had a discretion to grant or refuse, as they should see to be right and proper,) but for the corrupt motive of such refusal, for their oppressive and unjust refusing to grant them, because the persons applying for them would not give their votes for members of parliament as the justices would have had them.

An information against the justices of the town of Nottingham was granted for refusing to grant licenses for twenty public houses, to the occupiers of which licenses had been granted for several preceding years. It appearing that the persons who kept these houses had voted, at the last election for the town, for the candidates opposed to those whose interests the justices had espoused, *Ryder, C. J.*, said, "The abuse of such a discretionary power ought to be more severely punished than the abuse of a power which is not discretionary. It appears in this case to have been very grossly abused, for it is not probable that the occupiers of twenty houses should have all so misconducted themselves at the same time, as to render it improper to grant them licenses." (*Rex v. Justices of Nottingham*, *Sayer's Rep.* 216, 217.)

In *Rex v. Temple*, (1 Keb. 727,) an information was granted against a justice of the peace for extortion and compounding to give new licenses to unlawful alehouses, and taking away good ones, and for discharging recognizances for appearance at sessions.

In *Rex v. Cornelius*, (2 Stra. 1210,) an information was granted against *Cornelius* and another justice of the peace of a borough, for a misdemeanour in taking money for granting licenses to alehouse-keepers.

In *Rex v. Hann and Price*, *Justices of the Peace for the Borough of Corfe Castle* (3 Burr. 1716,) on showing cause against an information which had been prayed for against the defendants, for a misdemeanour in the execution of their office, in refusing to grant a license to sell ale to one *Ingram*, an innkeeper in that borough, merely from a motive of resentment against him, for having espoused an opposite interest in the election for members of that borough; the defence was, that they did not act from any resentment or corrupt motive, but solely because *Ingram* was an improper person, and had kept a disorderly house, and continued to keep it after full notice to the contrary, and in particular that he encouraged gaming and cockfighting at his house. Lord Mansfield, C. J., said, "The court should never interpose against magistrates, unless they have acted from bad motives and *malâ fide*, especially in such a case as this, where they are intrusted with an absolute discretion: but for that very reason, this is the strongest case for the interposition of the court, if it appear that they have acted upon corrupt motives. If it did appear clearly that this man kept a disorderly house, it would be a reason against the court's interposing against the justices. But this does not clearly appear." And he declared it to be of very dangerous consequence to permit the due discretion of the justices to be influenced by considerations of this kind. The court made the rule absolute.

Afterwards, these justices confessing themselves guilty of the information, it was moved for a rule to dispense with their personal appearance, on the undertaking of their clerk in court to answer for their fines. But the court upon full debate were unanimous in refusing the

3. Magistrates' License for, &c.

Defendants must appear personally to receive judgment.

3. Magistrates' License for, &c.

motion. The general doctrine laid down by the court was, that although such a motion was subject to the discretion of the court, either to grant or refuse it, where it was clear and certain that the punishment would not be corporal; yet it ought to be denied in every case where it was either probable or possible that the punishment would be corporal; and this for the example sake; as the notoriety of their being called upon might deter others from the like offences. And finally, upon their appearance in court, the sentence was, that they should be committed for a month, fined fifty pounds each, and further imprisoned till the fine be paid. (*Rex v. Hann and Price*, 3 Burr. 1716, 1786.)

Time of applying for information, &c.

We shall hereafter (*post*, "Justices," Vol. III.) consider as to the time when the application for a criminal information should be made, and the other proceedings relative thereto.

(21.) REMEDY FOR IMPROPERLY GRANTING A LICENSE.

Improperly granting license.

A criminal information will be awarded against justices for granting an alehouse license under the influence of corrupt motives, as well as for refusing it; for in the former case it may be productive of mischief to the whole community; in the latter, the grievance is only felt by the individual. (See *R. v. Temple*, 1 Keb. 727; *R. v. Cornelius*, 2 Stra. 1210.)

Information for.

In *R. v. Holland and Forster*, (1 T. R. 692,) an information had been moved for against the defendants, who were justices for the county of Middlesex, for improperly granting an ale license to one *Harrison*, who had been refused one by the justices at their last general meeting, on account of misbehaviour. It appeared that the defendant, *Forster*, had been present at that general meeting at the time when the license was refused; but he had afterwards told the other defendant, *Holland*, who was not present at the general meeting, that the only reason why a license had not been granted then was, that they might have an opportunity of inquiring into the character of *Harrison*, and had accordingly prevailed upon *Holland*, at a private meeting held by those two only, to join in granting a license. The court were clearly of opinion that an information should be granted against a justice as well for granting a license improperly as for refusing one in the same manner: that it had already been done in the case of *R. v. Filewood and another*, E. T. 26 Geo. III. B. R.; and indeed the mischief of granting a license improperly was infinitely greater than that of refusing one; for in the former case it might be productive of injury to the whole community, while in the latter the grievance was felt only by the individual: that the only ground of these applications was the improper conduct of the magistrates; but as it appeared in this case that *Holland*, though not altogether blameless, had been deceived by *Forster*, they discharged the rule as to the former, upon his paying the costs of the application as against himself; and as to *Forster*, they granted the information.

In *R. v. Bingham, Clerk*, (1 Burn's J. 24th ed. 48, reported also by Mr. Gurney,) the defendant was convicted at Winchester Sum. Ass. 1813, of a conspiracy to defraud the revenue of certain stamp duties. It appeared in evidence at the trial that he was a justice of the peace, and one of those who attended on the general licensing day, when he obtained, through an improper influence, a license in order to enhance the value of some premises which were his own property. In pronouncing judgment, King's Bench, Nov. 26, 1813, *Le Blanc, J.*, said, "The court does not go out of its way to cast reflections upon the conduct of those who are not before the court; but it would not discharge its duty if it did not declare, that it is not a proper exercise of the functions of any magistrates so to grant a license, when they know that no house exists to which that license is to be applied. The legislature

has taken particular care that no person concerned in public houses or victualling houses, under the description of brewers or dealers in spirits, shall themselves take part in the granting of licenses, in order to guard against any improper influence in the granting of them, and it is subject to the same mischief and the same inconvenience that any person in the situation of a magistrate, being the owner of a house, which afterwards may be converted into a public house, should know and should consent to a license being kept on foot, which may ultimately tend to increase the value of his property, whenever that house may be conveyed to a person to whom the license may attach." The defendant was sentenced to be imprisoned in Winchester gaol for six calendar months, and Lord *Ellenborough*, C. J., directed the proceedings to be laid before the lord chancellor.

5. *Bad beer,*
&c.

If there be two sets of magistrates, as for a county and a borough, and having a co-ordinate jurisdiction in that borough, and one of the two sets appoint a meeting for granting alehouse licenses, and when the day arrives, refuse a license to an applicant for one; and then the other set of magistrates, having subsequently to the prior appointment, but before the first licensing day, appointed a future day for the same purposes, license on that day the person to whom on a former day a license had been refused, it is an indictable offence. (*R. v. Sainsbury*, 4 T. R. 451.) Et per *Ashhurst*, J., S. C., "There being no words of exclusion in the city charters, it follows as a consequence that the justices of the county have a concurrent jurisdiction in the borough of Southwark; if so, it also follows that the jurisdiction of holding the meeting directed by the 26 Geo. II. attached in those magistrates, who first gave notice of the meeting; and it was a breach of the law in the other magistrates to attempt to wrest this jurisdiction out of their hands; for what the law says shall not be done, it becomes illegal to do, and is therefore the subject-matter of an indictment, without the addition of any corrupt motives. And though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law."

Indictment for.

IV. Making and Selling Unwholesome Victuals.

A publican selling unwholesome wine or victuals may, it is said, be indicted for a misdemeanour at common law; and any person to whom the same has been sold may maintain an action against him for the injury done. (*Roll. Ab.* 95; and see 2 *East's P. C.* 822; *R. v. Southerton*, 6 *East*, 132, per Lord *Ellenborough*.) In addition to the remedy by indictment and action, a summary mode of proceeding before justices is now provided by 23 & 24 Vict. c. 84, *ante*, 52, tit. "*Adulteration*."

Indictment for
 selling unwhole-
 some victuals.

By the commission of the peace, two justices, one being of the quorum, may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances in that behalf made. (See *post*, "*Sessions*," Vol. V.)

Power of justices
 by the commis-
 sion.

V. Brewing, Selling, &c. Unwholesome Beer.

As to the brewing, selling, &c., unwholesome beer, see tit. "*Eccise*," Vol. II.

As to adulterating beer, see *ante*, p. 82.

By 10 Vict. c. 5, the use of sugar in brewing beer is permitted.

6. *Ale measures.*

What to be used.

By the 9 Geo. IV. c. 61, s. 19, *ante*, 107, we have already seen that persons licensed under that Act are to use standard measures in the sale of exciseable liquors; and the wine, spirit, beer, cider, and perry license, under that statute, has a clause implying a forfeiture of it in case of selling by any measures not of the legal standard. (See form of license, *post*, No. 32.) And such an offence would be punishable under sect. 21, *ante*, 107, as an offence against the tenor of the license. Selling ale in unsealed measures seems to have been an offence at common law. (*R. v. Burgen*, 2 *Keb.* 477.)

VI. *Ale Measures.*VII. *Keeping Disorderly House, or permitting Drunkenness, &c.; Harboursing Thieves, &c.; Offenders against Revenue Laws, &c.*Disorderly inns
indictable

All *disorderly* inns or alehouses, or other houses, are public nuisances, and may at common law, upon indictment, be suppressed, and the keepers of them fined. (*Stephens v. Watson*, 1 *Salk* 44.)

Offence against
the tenor of the
license.
Forfeiture of
license.

The 9 Geo. IV. c. 61, s. 21, *ante*, 107, &c., imposes penalties for offences against the tenor of the license under that Act; and which license contains clauses of forfeiture in case of knowingly permitting or suffering persons of notoriously bad character to assemble or meet together in the house, or permitting drunkenness or other disorderly conduct in the house or premises. (See form of license, No. 32, *post*.)

Assemblage of
prostitutes.

To permit prostitutes, &c., with knowledge of their character, to be in a shop or house for the purpose of getting refreshment, and to remain there for no longer than was necessary for that purpose, is not knowingly to permit or suffer prostitutes, &c., to meet together and remain therein so as to bring the keeper of the house within the penalty of the above section. (*Greig v. Bendeno*, 27 *L. J. M. C.* 294; *E. B. & E.* 133, decided upon a local Act containing a similar enactment to the above.) But if the assemblage of such persons is otherwise within the meaning of the above clause of the section, as for instance, if it were for the furtherance of prostitution, making the house a house of call, it is not necessary that any disorderly conduct should be shown to have taken place, for the object of the clause is the prevention of disorderly conduct, the natural consequences of allowing such meetings. (See *Purkis v. Huxtable*, *infra*; *Greig v. Bendeno*, *ubi sup.*; *Belasco v. Hannant*, 3 *B. & S.* 13; 31 *L. J. M. C.* 225.) It is the magistrate's duty to ascertain on the evidence whether the assembling was for the *bonâ fide* purpose of refreshment, or with any other lawful object, or in furtherance of prostitution or other unlawful object. (*Greig v. Bendeno*; *Belasco v. Hannant*, *ubi sup.*; *Purkis v. Huxtable*, 28 *L. J. M. C.* 221; 1 *E. & E.* 780.)

Or notoriously
bad characters.

So if thieves were permitted to come to the house for the purpose of concerting crimes, the keeper of the house may be convicted for knowingly suffering it, and no act of thieving need be shown to have been planned on the premises, nor any disorderly conduct to have taken place, but if the thieves only meet together and remained in the house for any lawful purpose, or for the *bonâ fide* purpose of refreshment, no conviction ought to take place. (*Greig v. Bendeno*; *Belasco v. Hannant*, *ubi sup.*)

It should be shown that the defendant knew of the character of the assemblage, but this also is entirely a question of fact for the magistrates. (*Purkis v. Huxtable*; *Greig v. Bendeno*; *Belasco v. Hannant*.)

Evidence of what took place on a previous occasion, as, for instance, the character of persons assembled there on that occasion, is admissible

to prove the defendant's knowledge of their character. (*Parker v. Green*, 6 L. T. N. S. 46.)

An offence against the license is made a criminal matter by the 9 Geo. IV. c. 61, s. 21, and therefore the public house keeper cannot be examined as a witness. (*Parker v. Green*, 31 L. J. M. C. 133; 6 L. T. N. S. 48.)

A licensed alehouse is a place of public resort within the 35th sect. of "The Towns Police Clauses' Act," 1847 (10 & 11 Vict. c. 89), *Cole v. Coulton*, 2 E. & F. 695; 29 L. J. M. C. 125.

These provisions are extended to other houses of public resort within the metropolitan police district, by the 2 & 3 Vict. c. 47, s. 44, which, after reciting that it is expedient that the provisions made by law for preventing disorderly conduct in the houses of licensed victuallers be extended to other houses of public resort, enacts that every person who shall have or keep any house, shop, room, or place of public resort within the metropolitan police district, wherein provisions, liquors, or refreshments of any kind shall be sold or consumed, (whether the same shall be kept or retailed therein or procured elsewhere,) and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games, or any gaming whatsoever therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein, shall for every such offence be liable to a penalty of not more than five pounds; provided always, that if the offender be a licensed victualler, or licensed to sell beer by retail to be drunk on the premises, this enactment shall not be construed to exempt him from the penalties, or penal consequences to which he may be liable for committing an offence against the tenor of the license to him granted. (The 2 & 3 Vict. c. 94, s. 28, contains a similar enactment for the city of London.)

The innkeeper who harbours or permits the resort of thieves or persons of scandalous reputation, or suffers frequent disorders in his house, is guilty of a misdemeanour at common law, for which he may be fined or imprisoned. (1 *Hawk*. c. 32.)

By the 5 Geo. IV. c. 83, s. 13, any justice, on information on oath that any idle or disorderly person, or rogue or vagabond, or incorrigible rogue, is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, may, by warrant under his hand and seal, authorise any constable or other person or persons to enter at any time into such house and apprehend and bring before him or any other justice every such idle and disorderly person, rogue, and vagabond, and incorrigible rogue, as shall be found therein. (See *post*, "*Vagrant*," Vol. V.)

It seems also at common law, if there be disorderly drinking or noise at an unreasonable time of night, especially in inns, taverns, or alehouses, the constable or his watch, demanding entrance and being refused, may break open the doors to see and suppress the disorder. (2 *Hale's P. C.* 95.)

By 7 & 8 Geo. IV. c. 38, constables are not to be required to make presentments respecting unlicensed or disorderly alehouses.

For more concerning disorderly houses, see "*Disorderly House*," Vol. I.; "*Gaming*," Vol. II.; "*Riot*," Vol. V.

By the 10 Geo. IV. c. 44, s. 6, (the Metropolitan Police Act,) publicans harbouring police officers during their hours of duty are subject to a penalty of not more than five pounds, to be recovered before two justices.

As to the harbouring of offenders against the revenue laws, see 7 & 8 Geo. IV. c. 53, s. 29, *post*, "*Excise*," Vol. II.

7. *Disorderly houses, &c.*

Regulations of 9 Geo. IV. c. 61 for the prevention of disorderly conduct, &c. in public houses, to extend to other houses of public resort within the metropolitan police district.

Harbouring thieves, &c. indictable.

Apprehending vagrants, &c.

Breaking open doors to suppress disorder.

Presentment by constable.

Harbouring police officer.

Offenders against revenue laws.

8. *Seditious meetings.*

Licenses of public houses, where unlawful clubs held, forfeited.

Seditious pamphlets.

Forfeiture of license.

VIII. *Holding Seditious Meetings.*

By stat. 57 Geo. III. c. 19, for the more effectually preventing seditious meetings, any two justices, upon evidence on oath that any meeting of any society or club hereby declared to be unlawful (*i. e.*, societies or clubs calling themselves Spenceans or Spencean Philanthropists, and all other societies or clubs by whatever name called or known, who hold and profess the same objects and doctrines, 57 Geo. III. c. 19,) or any meeting for any seditious purpose, hath been held at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, with the knowledge and consent of the person keeping such house, &c. to adjudge the license for selling ale, &c. granted to the person keeping such house, &c. to be forfeited; and the person so keeping such house, &c. shall, from and after the day of the date of such adjudication and notice thereof given to him, be liable to all the penalties and forfeitures for any act done after that day, which such person would be liable to if such license had expired or otherwise determined on that day. (See the enactment in full, *post*, "*Riot*," Vol. V.)

By the 39th Geo. III. c. 79, s. 31, "Every place licensed for the sale of ale, &c. shall be deemed a place licensed for the reading of books, pamphlets, and other publications under this Act, but any two justices of the jurisdiction, upon evidence on oath that books, pamphlets, and other publications of a seditious or immoral nature are usually distributed to be read at such place, may adjudge and declare the ale and spirit license forfeited, and the persons keeping such place shall afterwards be subject to all the penalties as though such licenses had expired or been otherwise determined." (See the Act, *post*, "*Riot*," Vol. V.)

See further as to seditious meetings, *post*, "*Riot*," Vol. V.; "*Treason*," Vol. V.

IX. *Closing Doors in Riots.*

Closing doors of inns during riots.

We have already seen the 9 Geo. IV. c. 61, s. 20, empowers two justices to order the closing of doors of houses licensed under that Act to be closed during riots, &c. *ante*, 107.

And if a publican, notwithstanding such order, keep his house open, he would be guilty of an offence against good order and rule, which is punishable under s. 21, *ante*, 107, as an offence against the tenor of his license.

X. *Permitting Gaming, Music, Dancing, &c. in Inn.*

Gaming.

The law relative to gaming-houses in general will here apply. (See *post*, "*Gaming*," Vol. II.) It may be as well to notice, however, that if the guests at an inn or tavern call for dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation or the like, these are not within the statute 33 Hen. VIII. c. 9, s. 11, if the house is not kept for gaming, nor the gaming be for lucre or gain. (*Dalt.* c. 46.)

It is, however, an offence against the tenor of a license under 9 Geo. IV. c. 61, to knowingly suffer any unlawful games or any gaming whatsoever in an inn. Any playing at cards for money in any part of the licensed premises is gaming within the prohibition, therefore a friendly game at cards among the private friends of the innkeeper for a small stake in the bar parlour is an offence against the license. (*Patten v. Rhymer*, 29 L. J. M. C. 189.)

But a game at dominoes is not an unlawful game, and unless money is staked upon it it is not gaming so as to bring it within the prohibition of the license. (*Reg. v. Ashton*, 1 E. & B. 286 ; 22 L. J. M. C. 1.)

Permitting gaming in any licensed house is an offence against the terms of the license, and as such is punishable under sect. 21, *ante*, 107, (see form of license, No. 32, *post*.) It also involves a forfeiture of the license.

Permitting gaming in other houses of public resort within the metropolitan district is also punishable by the 3 & 4 Vict. c. 47, s. 44, *ante*, 123.

As to billiards playing, see "*Billiards*," *post*.

For the law relative to keeping houses for performance of music, dancing, and other entertainments in general, see "*Disorderly House*," Vol. I. It may be as well, however, here to notice, that by stat. 25 Geo. II. c. 36, s. 2, any house, room, or garden, or other place kept for public dancing, music, or other public entertainment of the like kind in London and Westminster, or within twenty miles thereof, without license from the last preceding Michaelmas quarter sessions, under the hands and seals of four or more justices there assembled, (except the theatres of Drury Lane, Covent Garden, and Haymarket, and other entertainments exercised by letters-patent or license of the Crown or of the Lord Chamberlain, s. 4.) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit one hundred pounds with full costs to him who shall sue (in six months) in any of the courts of Westminster, and be otherwise punishable as in case of disorderly houses ; and the person who shall appear to act as master, or as having the management of such gaming-house or other disorderly house, shall be deemed a keeper thereof and liable as such ; and it shall be lawful for any constable or other person, being authorised by warrant under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law. See this provision in full, *post*, "*Disorderly House*," Vol. I.

11. *Drunkenness.*

Music, dancing, &c.

XI. Drunkenness.

Drunkenness is an offence for which a man may be punished in the Ecclesiastical Court, (a) as well as by justices of peace by statute.

It is an offence against the tenor of the license under 9 Geo. IV. c. 61, to knowingly permit drunkenness or disorderly conduct in the house. (See *Wray v. Toke*, 12 Q. B. 492 ; *ante*, p. 81.)

In order to convict a man of drunkenness under the statute of James, he must be summoned under that statute, and therefore a conviction for that offence upon a summons for drunkenness and riotous behaviour under the Public Health Act, 1848, was quashed. (*Martin v. Pridgeon*, 28 L. J. M. C. 179 ; 1 E. & E. 778.) And a similar conviction upon a summons for drunkenness and riotous behaviour under the 23 Vict. c. 27, was also quashed. (*Soden v. Cray*, 7 L. T. N. S. 324.) The statute of 21 Jac. I. c. 7, is now wholly repealed. By 26 & 27 Vict. c. 125, it is repealed all but sections 4 and 5. Sect. 4 is repealed by 9 Geo. IV. c. 61, and as to sect. 5, constables are not now required to present disorderly houses, by 7 & 8 Geo. IV. c. 38.

As to the forfeiture of a publican's license for, *ante*, 107.

A publican cannot recover for beer furnished to third persons by the order of an individual who has previously become intoxicated by drinking in his house. (*Brandon v. Old*, 3 C. & P. 440.)

Punishable in Ecclesiastical Court.

Offence against tenor of license conviction for.

Forfeiture of license.
Action for bill.

(a) See *Burn's Ecclesiastical Law*, tit. "*Drunkenness*."

11. *Drunkenness.*

When a defence to an action.

It would seem that drunkenness, if of that description as totally to deprive the drunkard of reason, is a ground for his avoiding a contract made by him while so drunk, although no fraud was practised upon him. (*See Pitt v. Smith*, 3 *Camp.* 33 ; *Fenton v. Holloway*, 1 *Stark.* 126, *Sentance v. Poole*, 3 *C. & P.* 1.)

XII. *Opening Inns, &c. on Sundays, Fast-days, &c.*

Offence against tenor of license,

The 21st section of the 9 Geo. IV. c. 61, *ante*, 107, imposes penalties for offences against the tenor of the wine and spirit, &c. license under that Act ; and in such license there is a clause of forfeiture for keeping open the house except for the reception of *travellers*, or permitting or suffering any beer or other exciseable liquor to be conveyed from or out of the premises during the usual hours of the morning and afternoon service in the church or chapel of the parish or place in which the house is situate, on Sundays, Christmas-day, or Good Friday ; or not maintaining good order or rule therein. (*See form of the license, post*, No. 32.)

Morning hours.

The hours for closing beer houses, alehouses, &c. are now regulated, as to the morning, by the 11 & 12 Vict. c. 49, and it is enacted by sect. 1, "That no licensed victualler or person licensed to sell beer by retail to be drunk on the premises or not to be drunk on the premises, or other person in any part of Great Britain, shall open his house for the sale of wine, spirits, beer, or other fermented or distilled liquors, or sell the same on Sunday before half-past twelve o'clock in the afternoon, or where the morning divine service in the church, chapel, kirk, or principal place of worship of the parish or place shall not usually terminate by that time, before the time of the termination of such service, and that no licensed victualler or other person in England shall open his house for the sale of wine, spirits, beer, or other fermented or distilled liquors, or sell the same on Christmas-day, Good Friday, or any day appointed for a public fast or thanksgiving, before the respective times aforesaid, except in all the cases aforesaid as refreshment for travellers. Provided always, that nothing herein contained shall authorize the opening of any house for the sale of wine, spirits, beer, or other fermented or distilled liquors, within the metropolitan police district, or any city, town, or place, at an earlier hour or time than is now allowed by law when the opening of such house or such sale is now specially prohibited before any later hour or time than that hereinbefore mentioned."

Not to apply to Metropolitan Police District.

And by sect. 4, it is enacted, that "No person shall open any house or place of public resort for the sale of fermented or distilled liquors, or sell therein such liquors, in England or Scotland before the hour of half-past twelve o'clock in the afternoon, or where the morning divine service in the church, chapel, kirk, or principal place of worship shall not usually terminate by that time, before the time of the termination of such service on Sunday, or in England before the like hour on Christmas-day, or Good Friday, or any day appointed for a public fast or thanksgiving, except as refreshment for travellers."

By sect. 5, "Any constable may at any time enter into any house or place of public resort for the sale of wine, spirits, or other fermented or distilled liquors, and every person who shall refuse to admit or shall not admit such constable into such house or place, shall be deemed guilty of an offence against that Act."

By sect. 6, "Every person offending against that Act shall be liable, upon a summary conviction for the same before any justice of the peace for the county, riding, division, liberty, city, borough, or place where the offence shall be committed, to a penalty not exceeding five pounds

for every such offence, and every separate sale shall be deemed a separate offence."

This statute is not repealed by the 17 & 18 Vict. c. 79, and 18 & 19 Vict. c. 118, which apply only to Sunday afternoon, and is therefore a statute now in force as to morning service. (*Reg. v. Senior*, 33 *L. J. M. C.* 125; 1 *L. & C.* 401; *Harris v. Jenns*, 39 *L. J. M. C.* 183; 9 *C. B. N. S.* 152.) And the words "other person" in the first section render it immaterial whether the offender had a license or not. (*Harris v. Jenns*, *ubi sup.*) And made or British wines containing alcoholic spirit is fermented liquor, whether exciseable or not. (*Ib.*)

As to afternoon hours, the statute now in force is the 18 & 19 Vict. c. 118, which repeals the 9 Geo. IV. c. 61, so far as this matter is concerned. The 2nd section enacts, that "It shall not be lawful for any licensed victualler, or person licensed to sell beer by retail to be drunk on the premises or not to be drunk on the premises, or any person authorized to sell any fermented or distilled liquors, or any person who, by reason of the freedom of the mystery or craft of Vintners of the City of London, or of any right or privilege, shall claim to be entitled to sell wine by retail to be drunk or consumed on the premises in any part of England or Wales, to open or keep open his house for the sale of or to sell beer, wine, spirits, or any other fermented or distilled liquors between the hours of three and five o'clock in the afternoon, nor after eleven o'clock in the afternoon on Sunday, or on Christmas-day or Good Friday, or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, &c., except to a traveller or lodger therein."

12. *Opening on Sundays, &c.*

Afternoon hours.

This Act applies to both licensed victualler and beer-shop keeper, and fixes the hours for closing beer-houses, ale-houses, &c., in the afternoon, irrespective of the duration of divine service. (*Whitely v. Heaton*, 27 *L. J. M. C.* 217; see *Reg. v. Knapp*, 2 *E. & B.* 447; *S. C.* 22 *L. J. M. C.* 139, before this Act passed.)

By the 3rd section, "No person shall open any house or place of public resort for the sale of fermented or distilled liquors, or sell therein such liquors in any part of England or Wales between three and five o'clock in the afternoon, or after eleven o'clock in the afternoon on Sunday, Christmas-day, Good Friday, or such other days as are appointed as aforesaid, except to travellers."

By the 4th section, any constable may, "at any time enter into any house or place of public resort in England or Wales for the sale of beer, wine, spirits, or other fermented or distilled liquor or liquors; and every person who shall refuse to admit or shall not admit such constable into such house or place shall be deemed guilty of an offence against this Act."

Constables may enter.

By sect. 5, "Every person who shall offend against this Act shall be liable upon a summary conviction for the same before any justice of the peace for the county, riding, division, liberty, city, borough, or place where the offence shall be committed, to a penalty not exceeding five pounds for every such offence, and every separate sale shall be deemed a separate offence."

Penalties.

Jurisdiction is given by the above section to the justices of the county, who may therefore convict sitting in petty sessions, although it may not appear that they were justices of the petty sessional division. (*Reg. v. Shaw*, 34 *L. J. M. C.* 169; 1 *L. & C.* 579.) It seems that the general form of conviction under 11 & 12 Vict. c. 43, would be sufficient. (See *Ex parte Allison*, 24, *L. J. M. C.* 73; 10 *Exch.* 561.) The statute does not require any information in writing; and a conviction under this statute is good, even though no information or summons has been issued, if the party appears before the magistrate, and the charge is there made before him, but it would seem that the party has, in that case, good ground for asking for an adjournment. (*Reg. v. Shaw*, 34 *L. J. M. C.* 169; 1 *L. & C.* 579.)

12. *Opening
on Sundays,
&c.*

Exception in
favour of tra-
vellers.

Who a traveller.

It is to be observed that the prohibition in the license under the 9 Geo. IV. c. 61, contains an exception in favour of "travellers," and also the prohibitions in the 11 & 12 Vict. c. 49, ss. 1 and 4, as to morning hours, do not either of them apply to "refreshment for travellers," nor again do those contained in 18 & 19 Vict. c. 118. So also the Metropolitan Act, (2 & 3 Vict. c. 47,) and the City Act, (2 & 3 Vict. c. 94, s. 26,) contain a similar exception. The word "traveller" has accordingly undergone judicial construction.

In *Taylor v. Humphries*, (34 L. J. M. C. 1; 17 C. B. N. S. 539,) the word "travellers" in the 11 & 12 Vict. c. 49, ss. 1, 3, and 4, was held to apply to Birmingham artizans who, on a Sunday morning, had taken a seven or eight mile walk through lanes and fields, and on their way home had stopped for refreshment at the defendant's house, which was situated two miles and a half from the centre of the town, and a mile and a half from the boundary; and *Erle*, C. J., in delivering judgment, said, "We think a person would be a traveller within the exception if he came abroad from any of the motives above suggested as legitimate," (these were for the purpose of enjoying fresh air, and nature, and recreation, or business,) "and by reason thereof needed refreshment. But if he came abroad merely because he desired to go to a public house and obtain drink he would not. The circumstances under which the guest was admitted and supplied would be matter for consideration in deciding whether the publican had reason to believe and did believe that his customer was a traveller within this description, either when admitted or when afterwards supplied with refreshment as such; as whether he was a stranger or a neighbour, whether he delayed longer or took more than was consistent with the need of refreshment. The distance also would be relevant; but no rule can be laid down for a defined distance, as what may be short for the vigorous may be long for the weakly." In *Atkinson v. Sellers*, (28 L. J. M. C. 12; 5 C. B. N. S. 442,) decided upon the 18 & 19 Vict. c. 118, s. 2, the magistrates convicted because the guests had taken a drive of a few miles for pleasure on a Sunday afternoon, being of opinion that business was necessarily intended in the idea of travelling; but the court quashed the conviction; and *Cockburn*, C. J., says, "A man cannot be said to be a traveller who goes to a place merely for the purpose of taking refreshment; but if he goes to an inn for refreshment in the course of a journey, whether of business or of pleasure, he is entitled to demand it, and the innkeeper is justified in supplying it." And *Crowder*, J., there says, "The only real distinction is between a man living in the neighbourhood or at a distance; whether he is travelling for pleasure or on business cannot make any difference." In *Taylor v. Humphries*, (30 L. J. M. C. 242; 10 C. B. N. S. 433,) the magistrates convicted under the 18 & 19 Vict. c. 118, s. 2, where the guests had walked out on Sunday afternoon four miles for their pleasure; but the court quashed the conviction on the ground that a man might be a traveller though he was walking for pleasure, and had not exceeded the distance above mentioned.

In *Fisher v. Howard*, (34 L. J. M. C. 42,) decided on the 2 & 3 Vict. c. 47, s. 42, a person who has taken a ticket at a railway station, and is about to start by a train from the station, is a traveller within that section before the train starts, and a conviction of the keeper of the refreshment room in the station, who served such a person before the train started, and after he had taken his ticket, with fermented liquor within the prohibited hours on a Sunday morning, was quashed.

In *Peaché v. Colman*, (35 L. J. M. C. 118; 1 L. R. C. P. 324,) decided upon 11 & 12 Vict. c. 49, s. 1, *Peaché* kept a public house outside the Sevenoaks Railway Station, which was a mile from Sevenoaks, and on a Whit Sunday, after the arrival of an excursion train, and before half-past twelve o'clock in the day, there were several persons in the house drinking, of whom two at least were persons from Sevenoaks, and

there was no evidence to show how the last-mentioned persons came to be there. Mr. Justice Montague Smith there says, "An excursion train had just arrived, and the persons in the house might have arrived by it. They might either have been travellers and going home, or might have come to meet their friends at the train, in either of which cases I think they would equally be travellers within the meaning of the statute." The conviction was quashed.

Another question arises in these cases, namely, how far the duty of determining whether the person be a traveller or not is cast upon the innkeeper. Is he to be satisfied with the mere statement of the person admitted? In *Taylor v. Humphries*, (30 L. J. M. C. 242; 10 C. B. N. S. 433,) Erle, C. J., says, "The question is whether there was a *mens rea*, for it seems to me that in order to convict the innkeeper, it ought to be established by the evidence that he intended to give refreshments to a person who was not a traveller." And it may be gathered from the judgment in *Taylor v. Humphries*, (34 L. J. M. C. 1; 17 C. B. N. S. 539,) that the innkeeper must draw the proper inferences from the conduct of the guest as to whether his object was refreshment only or tipping. In the first instance, however, probably the mere statement of the guest without any circumstances to throw discredit thereon would justify the innkeeper in providing refreshment.

In *Taylor v. Humphries*, (34 L. J. M. C. 1; 17 C. B. N. S. 539,) it was contended, and the argument was approved of in the judgment, that the burthen of proof that the prohibition had been infringed, and that the case was not within the exception, was cast on the informer; (*Gill v. Sinvens*, 7 T. R. 27; *Reg. v. Pratten*, 6 T. R. 559;) but this statement of the law conflicts with the prior case of *Tennant v. Cumberland*, (5 Jur. N. S. Q. B. 763,) where it was directly decided that the onus is on the defendant to show that the guest was a traveller if he desired to have the benefit of the exemption. And by the 11 & 12 Vict. c. 43, s. 14, it is provided that if the information or complaint shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence if he would have the advantage of the same. It is submitted that the latter view of the law is the correct one, and that the statute 11 & 12 Vict. c. 43, is decisive of the question. It does not appear from the report of *Taylor v. Humphries*, (34 L. J. M. C. 1; 13 W. R. 136; 11 L. T. N. S. 376,) that that statute was brought to the attention of the court in that case, whilst the cases of *Gill v. Sinvens* and *Reg. v. Pratten*, it is submitted, go only to the extent of laying down that the information must negative the exception, but leaving the question upon whose side the burthen of proof lies still open. It is true that, in the report in 17 C. B. N. S. 539, the 11 & 12 Vict. c. 43, s. 14, is mentioned in the argument, but it is singular that no allusion is made to it in the judgment.

The 2 & 3 Vict. c. 47, s. 42, enacts, "That no licensed victualler or other person shall open his house, within the metropolitan police district, for the sale of wine, spirits, beer, or other fermented or distilled liquors on Sundays, Christmas-day, and Good Friday, before the hour of one in the afternoon, except* refreshment for travellers." (The 2 & 3 Vict. c. 94, s. 26, contains a similar enactment for the city of London.)

The 5 & 6 Vict. c. 44, s. 5, enacts, "That no wines, spirits, or other exciseable liquors shall be sold by retail on board of any boat, steam-boat, or other vessel which shall be moored or lying at anchor within the metropolitan police district, during the hours and times on Sundays, Good Friday, and Christmas-day, on which licensed victuallers are by law obliged to keep their houses closed; and any master, steward, mistress, or stewardess, or any other person on board any such boat, steam boat, or other vessel, who shall during those hours on Sundays, Good

12. Opening on Sundays, &c.

Onus of showing
that a person is
not a traveller is
upon informer
sed quare.

Public houses in
the metropolitan
police district not
to open before
one o'clock on
Sundays, &c.
* *Sic*.

No wines, &c. to
be sold on board
any boats or
vessels moored or
lying at anchor
within the metro-
politan police
district during
the time when
prohibited to be
sold in public
houses.

12. *Opening
on Sundays,
&c.*

Friday, and Christmas-day in which the houses of licensed victuallers shall be closed, sell any wines, spirits, or other exciseable liquors, in and on board such boat, steam boat, or other vessel, within the said district, shall be liable to a penalty not exceeding five pounds, which may be recovered before any magistrate of the metropolitan police courts, or if the offence shall be committed beyond the limits of any metropolitan police court established or to be established, before any two justices of the peace having jurisdiction therein, or shall, in the discretion of the magistrate or justices of the peace before whom the conviction shall take place, be imprisoned for any time not longer than one calendar month in any gaol or house of correction within his jurisdiction; and in every case of the adjudication of such pecuniary penalty, and non-payment thereof, it shall be lawful for such magistrate or justices of the peace to commit the offender to such gaol or house of correction for a term not exceeding one calendar month, the imprisonment to cease on payment of the sum due; and such penalty shall be paid to the receiver of the metropolitan police, and be applied by him towards the expenses of the police courts established within the said district."

In indictment for.

It would be an offence at common law and indictable to keep open an inn on a Sunday, and suffer tippling and noise therein, if it amounted to a common nuisance. (See "*Nuisance*," Vol. III., and form of indictment, *post*, No. 41.)

The 21 Geo. III. c. 49, s. 1, prohibits, under penalties, the keeping open of inns, &c., for debating on Sundays. (See *post*, "*Lord's-Day*," Vol. III.)

XIII. Quartering of Soldiers.

Quartering in
alehouses, &c.

By the annual Acts against mutiny and desertion, the constable, and in his default a justice of the peace, may quarter soldiers in inns, livery stables, alehouses, and victualling-houses; as is set forth more at large in title "*Military Law*," Vol. III.

Quartering in
beer houses.

By 4 & 5 Will. IV. c. 85, s. 5, according to the terms of the license under that Act for selling beer or cider by retail, to be drunk and consumed on the premises, all provisions for billeting officers and soldiers in victualling-houses, contained in any Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in the license. (See forms of the license, *post*, Nos. 4, 6.) But by sect. 5, the provisions are not to extend to persons not licensed to sell beer and cider to be consumed on the premises.

XIV. Liability of Innkeepers as to receiving Guests, &c.

Remedies for re-
fusal to receive,
&c.

If one who keeps a common inn improperly refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury, in an action on the case, at the suit of the party grieved, but may also be indicted and fined at the suit of the king. (1 *Hawk.* c. 32, s. 2.) And it is said in *Dalt* c. 7, that inns being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the innkeepers fined, if they refuse to entertain a traveller without a very sufficient cause. And in a *nisi prius* case it was considered that an indictment lies against an innkeeper who refuses to receive a guest, he having room in his house at the time. And it is no

defence for the innkeeper that the guest was travelling on a Sunday, and at an hour of the night after the innkeeper's family had gone to bed; nor is it any defence that the guest refused to tell his name and abode, as the innkeeper had no right to insist upon knowing those particulars; but if the guest come to the inn drunk, or behaves in an indecent or improper manner, the innkeeper is not bound to receive him. (*R. v. Ivens*, 7 C. & P. 213.)

The indictment should state the person refused was a traveller, otherwise it would be quashed; (*R. v. Luellin*, 12 Mod. 445;) stating his being a sick person would not do.

The action for a mere refusal to receive the traveller, is an action on the case, and it would seem that some special damage should attend such refusal, such as the traveller being compelled to go a distance elsewhere, &c. (See *Bro. Ab. Action on the Case*, 76; *Godb.* 346; *Palm.* 374).

It is said that the innkeeper may be compelled by the constable of the town to receive and entertain a traveller as his guest; and that it is no way material whether he hath a sign before his door or not, if he make it his common business to entertain travellers. But how the officer may compel him may be a question: it seemeth that all the officer can do, is either to cause such alehouse to be suppressed, or else to present such offence at the assizes or sessions, so that such offender may be thereupon indicted. (*Dalt.* c. 7; *R. v. Luellin*, 12 Mod. 445; *Newton v. Trigg*, 1 Show. 270.)

Their liability for the loss of goods is now limited by 26 & 27 Vict. c. 41.

15. Inn-keepers' rights.

XV. Of Remuneration and herein of the Tippling Act, and County Courts Act, 1867.

Herein, of his remuneration.

Remuneration, amount of, &c.—An innkeeper is not entitled to greater charges than what are reasonable. In deciding as to what is reasonable, not only the intrinsic value of the goods received into his care must be taken into estimation, but also the trouble and risk which the innkeeper takes upon himself in his character of innkeeper. (*Newton v. Trigg*, 1 Show. 268; *Carth.* 150.)

If an innkeeper be guilty of a gross over-charge in his bill, the guest may tender him a reasonable amount, or the innkeeper may be indicted and fined for his extortion. (*Johnson's case*, *Cro. Jac.* 610; *Kirkman v. Shawcross*, 6 T. R. 17; see *ante*, 65, 130.)

Remuneration,
amount of, &c.

Extortion.

Sale of Spirits under 20s. &c.—By the 24 Geo. II. c. 40, s. 12, it is enacted, "No person shall recover any sum of money, debt, or demand on account of *spirituous liquors*, unless it shall *bonâ fide* have been contracted at one time to the amount of 20s. or upwards; nor shall any particular article in any account for distilled spirituous liquors be allowed where the liquors delivered at one time shall not amount to the full value of 20s. at the least, and that without fraud or covin, and where no part of the liquors so sold shall have been returned or be agreed to be returned directly or indirectly; and if any retailer, with or without license, shall take any pawn by way of security for payment of any money for such spirituous liquors or strong waters, he shall forfeit 40s. for every pawn or pledge so taken, to be levied by warrant of one justice, half to the poor and half to the informer, and the owner shall have such remedy for recovering such pawn or the value thereof as if it had never been pledged."

Sale of spirits,
&c., under 20s.
at a time.

Penalty for taking
pawn for.

15. *Inn-keepers' rights.*

Under this Act it has been decided that an innkeeper cannot recover the amount of the items in his bill for spirits, or spirits mixed with water, unless each item is for spirits furnished at one time to the amount of 20s., although forming items in a bill for a dinner, and that furnished not to the defendant but to others at his request. (*Gilpin v. Rendle*, 1 *Schw. N. P.* 55; *Burnyeat v. Hutchinson*, 5 *B. & Ald.* 241.)

If an innkeeper or other person sell two sorts of spirits at the same time to an amount above 20s., he may recover the price, although the amount of each species of spirits be under 20s. (*Owens v. Porter*, 4 *C. & P.* 367; *et per Bosanquet, J., S. C.*) The object of the Act seems to have been, that if a number of articles, each under 20s., are delivered at different times, it should not be lawful to charge them in one item so as to make them amount to more than 20s.

The Act applies to all sales of spirits, unless delivered in quantities amounting to more than 20s. in value at one time, and though the sale be to a person living in the hotel, or to a person not the consumer. (*Burnyeat v. Hutchinson*, 5 *B. & Ald.* 241.) Therefore, the price of spirits sold in quantities less than to the required amount of 20s. by a spirit merchant to a publican, to be consumed, not by the publican himself, but by his customers, cannot be recovered in an action. (*Hughes v. Done*, 1 *Q. B.* 294.)

In a case where the defendant was indebted to the plaintiff in different sums in respect of spirituous liquors so furnished and other goods, and the plaintiff being indebted to the defendant in the less sum, they agreed on a balance, the court held that this balance might be recovered, for the defendant was to be taken to have paid the amount due for spirituous liquors in setting off against the plaintiff's account generally what was due from the plaintiff to him; (which appeared to have been more than the charge for spirits;) and on the ground that though the plaintiff had originally no action to recover a debt so incurred, it being reasonable that defendant should pay it; had he paid it in money he could not have recovered back the amount, and such allowance in the account stated (which was not to be referred to the legal rather than to the illegal demand) was equivalent to payment. (*Dawson v. Remnant*, 6 *Esp.* 24.)

It has been held that the plaintiff was not entitled to recover on a bill of exchange, which the defendant had accepted in part in respect of money lent, and in part for a debt for spirits furnished in small quantities, although the residue of the consideration was good. (*Scott v. Gillimore*, 3 *Taunt.* 226; see, however, *Gaitskill v. Greathead*, 1 *D. & R.* 359, 360; and *Spencer v. Smith*, 3 *Camp.* 9.)

A publican cannot sue for beer, &c., furnished to a party already intoxicated, or knowingly to a party to enable him to become so. (*Ante*, 125.)

By 30 & 31 Vict. c. 142, s. 4, "No action shall henceforth be brought or be maintainable in any court to recover any debt or sum of money alleged to be due, in respect of the sale of any ale, porter, beer, cider, or perry, which after the commencement of this Act was consumed on the premises, where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry."

XVI. *Forms, List of.*

(1.) FORMS RELATIVE TO THE BEER AND CIDER LICENSE UNDER 11 GEO. IV. AND 1 WILL. IV. c. 64, &c., FOR BEER HOUSES.

Application for a License to retail Beer and Cider in London, under 11 Geo. IV. & 1 Will. IV. c. 64; or 4 & 5 Will. IV. c. 85, (No. 1.)—the like to retail Beer and Cider out of London, (No. 2.)—Overseer's Certificate, (No. 3.)

License to sell Beer and Cider by retail, on those Acts, *not* to be consumed on the premises, (No. 4.)

Certificate, under 4 & 5 Will. IV. c. 85, of six inhabitants, in order to procure a License to sell Beer and Cider to be drunk on the premises, (No. 5.)

License under same Act to sell Beer and Cider to be drunk or consumed on the premises, (No. 6.)

General Form of Information for an Offence under the Acts, (No. 7.)

General Form of Summons on such Information, (No. 8.)

General Form of Conviction, (No. 9.)

Information or Conviction on 1 Will. IV. c. 64, s. 6; and 4 & 5 Will. IV. c. 85, s. 18, for not putting up a descriptive Board, (No. 10.)—the like on 4 & 5 Will. IV. c. 85, s. 17, for selling Beer, &c., without a License, the Beer not being to be drunk on the premises where sold, (No. 11.)—the like for selling Wine and Spirits in a House licensed only to sell Beer, &c., (No. 12.)—the like on 1 Will. IV. c. 64, s. 12, for selling Beer, &c., otherwise than in the Standard Measures, (No. 13.)—the like on 1 Will. IV. c. 64, s. 13, for permitting Drunkenness or Disorderly Conduct in a licensed house, (No. 14.)—the like where party guilty of a like Third Offence, and the Magistrates adjudge the Offender disqualified from selling Beer for two years, &c., (No. 15.)—the like for an Offence against Letter of License, as suffering Gaming, &c., (No. 16.)—the like on 1 Will. IV. c. 64, s. 13, for selling adulterated Beer, (No. 17.)—the like for mixing Drugs in Beer, (No. 18.)—the like for adulterating Beer, (No. 19.)—the like for selling Beer within the prohibited hours elsewhere than in London, Westminster, and the Metropolitan boroughs, (No. 20.)—the like for selling Beer in London, Westminster, or the Metropolitan boroughs, within the prohibited hours, (No. 21.)—the like against a Witness on Stat. 1 Will. IV. c. 64, s. 20; or 4 & 5 Will. IV. c. 85, for not appearing to give Evidence, (No. 22.)

Notice, &c., of Appeal, (No. 23.)

Recognizance on Appeal against Conviction, (No. 24.)—the like to bind Informer to appear at Sessions on the Appeal, (No. 25.)

Warrant of Distress, (No. 26.)—Warrant of Commitment, (No. 27.)

(2.) FORMS RELATIVE TO THE WINE, SPIRIT, AND BEER, &c., LICENSE UNDER 9 GEO. IV. c. 61, FOR INNS AND PUBLIC HOUSES.

Precept to High Constable to order Petty Constables to give Notice of Meeting for licensing Public Houses under 9 Geo. IV. c. 61, s. 2, (No. 28.)

High Constable's Order to Petty Constables to give notice of Licensing Meeting under like Act, sect. 2, (No. 29.)

Notice of intended Application for a License to sell Liquors by retail, under like Act, sect. 10, (No. 30.)

Notice of intended Application to Transfer such License, on like Act, sect. 14, (No. 31.)

License to keep Inn and sell Wines, &c., on like Act, sect. 13, (No. 32.)

License granted at a Special Meeting in case of Death, on the like Act, sect. 14, (No. 33.)

16. *Forms
as to Beer
Houses.*

General Form of Information and Summons for an Offence under like Act, (No. 34.)

General Form of Conviction for an Offence under like Act, (No. 35.)

Conviction on like Act, sect. 18, for selling Wine or Spirits by retail without a License, (No. 36.)

Conviction on like Act, sect. 18, of a licensed Publican for selling an exciseable Liquor in Premises not being those licensed, (No. 37.)

Conviction on like Act, sect. 19, of a licensed Person for not using the Standard Measures, (No. 38.)

Conviction on like Act, sect. 21, for a First or Second Offence against the tenor of Publican's License, (No. 39.)

Notice of Appeal, Recognizance thereon, Warrant of Distress and Commitment, (No. 40.)

(3.) MISCELLANEOUS.

Indictment for selling Ale, &c., on a Sunday, (No. 41.)

(1.) FORMS RELATIVE TO THE BEER AND CIDER LICENSE, &c., UNDER 11 GEO. IV. & 1 WILL. IV. c. 64, 4 & 5 WILL. IV. c. 85; and 3 & 4 VICT. c. 61, FOR BEER HOUSES.

(1.) Application for a license to retail beer and cider in London.

To Her Majesty's Honourable Commissioners of Excise, or to such persons as the said Commissioners have authorised and employed to grant Licenses for selling Beer, [Cider and Perry,] by retail.

I, John Styles, [state the Christian and surname of the applicant,] now residing at _____, in the parish of _____, in the county of _____, being a householder and duly qualified in that behalf, being desirous of selling beer, ale, and porter, [or if cider and perry also, add those words accordingly,] by retail, under the provisions of an act made and passed in the first year of the reign of His late Majesty, to enable the general sale of beer and cider by retail in England, do hereby apply to you for, and request you to furnish me, within ten days after this application, with a license to enable me to sell beer, ale, and porter, [or if cider and perry also, say so,] by retail, in the house or premises situate at [here describe the house or premises wherein the beer, &c., is to be sold, specifying the situation of it, and the name, if any.] Given under my hand, this _____ day of _____, &c.

J. S.

(2.) The like, out of London.

To the Collectors and Supervisors of Excise for the Collection or District of _____.
I, John Styles, &c. [here state the nature of the application, as in the preceding form.]

(3.) Overseer's certificate under 3 & 4 Vict. c. 61, s. 2 (*ante*, 72).

*I, the undersigned, an overseer of the poor of the parish [or "township"] of _____ in the county of _____, do hereby certify, that _____, dwelling in _____, in the said parish of _____, is the real resident, holder, and occupier of the said house; * and that the true rent or annual value at which such house, with the premises occupied therewith, is rated in one rating to the poor-rates of the said parish [or "township"] of _____, according to the last sum or rate made and allowed in such parish [or "township"] of _____, for the relief of the poor, bearing date the _____ day of _____, 18____, is _____ pounds.*

[Or if the house has been erected or occupied since the last rate, proceed as above as far as *, and then as follows:] *And that the said house has not yet been rated, and the rent or annual value thereof is £ _____, which sum is not less than that at which the said house, with the premises occupied therewith, will be rated in one sum to the relief of the poor in the next rate to be made and allowed;*

and I further certify that the said
the said house and premises.

has claimed to be rated in respect of

16. Forms
as to Beer
Houses.

Dated this day of , 18 .

{ Overseer of the poor of the
parish [or "township"]
of .

WE, the undersigned, being of the commissioners of the excise [or "I, the undersigned, being a person authorised and employed by the commissioners of excise to grant licenses for selling beer, ale, and porter, [or "cider and perry," as the case may require,] by retail, [or "being a collector or supervisor of excise for the collection or district of ,"] do hereby authorise and empower A. L., now being a householder, and dwelling at , in the parish of , within the limits of the chief office of excise, [or "within the limits of the said collection or district,"] to sell beer, ale, and porter [or "cider and perry,"] by retail, in the dwelling-house of the said A. L., and in the premises thereunto belonging, having deposited a certificate signed by the six persons, viz. G. H., I. J., &c., [here set out their names and residences,] and by C. D., the overseer of the said parish, [or "township," &c.,] pursuant to the statute in such case made: Provided and upon condition that he or she [does not sell any beer, ale, or porter made otherwise than from malt and hops,] [omit these words in licenses to retail cider and perry;] nor mix, or cause to be mixed, any drugs or other pernicious ingredients in any beer, ale, or porter, [or "in any cider or perry,"] nor fraudulently dilute, deteriorate, or adulterate any beer, ale, or porter, [or "any cider or perry;"] nor sell any beer, ale, or porter, [or "any cider or perry,"] knowing the same to have been fraudulently diluted, deteriorated, or adulterated; nor use, in selling any beer, ale, or porter [or "any cider or perry,"] any measures which are not of the legal standard; nor wilfully or knowingly permit any drunkenness or any violent or quarrelsome or other disorderly conduct in his [or "her"] house or premises; nor knowingly suffer any unlawful games or any gaming whatsoever therein; nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; nor to maintain good order and rule therein; (a) [and all provisions for billeting officers and soldiers in victualling house, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this license (b):] and this license shall continue in force from the day of next until the day of then next ensuing, and no longer; provided, and upon condition, that the said A. L. shall not in the meantime become a sheriff's officer, or officer for executing the process of any court of justice, nor shall in the meantime cease to be a householder; and this license shall cease and determine, and shall become void, in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed, by the said A. L. Given under our hands and seals, [or "my hand and seal,"] this day of , one thousand eight hundred and , at .

(4.) License to sell beer and cider by retail on 11 Geo. IV. & 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 85, not to be consumed on the premises.

WE, the undersigned, being the inhabitants of the parish [or "township," as the case may be,] of , and respectively rated to the poor at not less than six pounds per annum, and none of us being maltsters, common brewers, or persons licensed to sell spirituous liquors, or being licensed to sell beer or cider by retail, do

(5.) Certificate, under 4 & 5 Will. IV. c. 85, of six inhabitants, in order to procure a license to sell beer and cider to be consumed on the premises (c).

(a) The form given in the schedule of the Act contains a clause prohibiting the sale of beer between certain hours therein named, which is omitted in the copy of the license here given. The section of the Act under which that clause was inserted has been repealed by the 3 & 4 Vict. c. 61, s. 14, and other provisions substituted; (ante, 78;) and the form of license now used by the excise does not appear to contain any such prohibition. It

leaves, therefore, the offence to be punished under the 3 & 4 Vict. c. 61, s. 15, (ante, 78.)

(b) It would seem that since the 4 & 5 Will. IV. c. 85, s. 5, ante, 71, this provision as to the billeting of soldiers is to be omitted in the license to sell beer or cider not to be drunk or consumed on the premises.

(c) The Act gives this form, see ante, 71.

16. *Forms as to Beer Houses.*

hereby certify that A. B., dwelling in street, [here specify the street, lane, &c.] in the said parish [or "township, &c.,"] is a person of good character, [Here insert the day of signing the certificate.]

(Signed) E. F. }
 G. H. } [Here state the residence of
 I. K. } each of the persons signing.]
 L. M. }
 N. O. }
 P. Q. }

I do hereby certify that all the above-mentioned persons, whose names are subscribed to this certificate, are inhabitants of the parish [or "township," &c.] of , rated to six pounds to the relief of the poor of the said parish.

C. D.
 Overseer of the parish [or "township," &c.]
 [Date.]

(6.) License under same Act to sell beer and cider to be drunk or consumed on the premises (a).

WE, the undersigned, being of the commissioners of excise [or "I, the undersigned, being a person authorised and employed by the commissioners of excise to grant licenses for selling beer, ale, and porter, [or "cider and perry," as the case may require,] by retail [or "being a collector or supervisor of excise for the collection or district of ,"] do hereby authorise and empower A. B., now being a householder, and dwelling in a house in [here specify street, &c.] in the parish [or "township," &c.], of within the limits of the chief office of excise [or "within the limits of the said collection or district,"] to sell beer, ale, and porter [or "cider and perry,"] by retail, in order that it may be consumed in the said dwelling-house of the said A. B., and in the premises thereunto belonging, and having deposited a certificate, signed by six persons, videlicet, [here set out the names and residences of the persons signing the certificate,] and by C. D., the overseer of the said parish, [or "township," &c.] according to the statute in such case made : Provided and upon condition that the said A. B. do not sell any beer, ale, or porter made otherwise than from malt and hops, [omit these words in licenses to retail cider and perry,] nor mix or cause to be mixed any drugs or other pernicious ingredients in any beer, ale, or porter, [or "in any cider or perry,"] nor fraudulently dilute, deteriorate, or adulterate any beer, ale, or porter, [or "any cider or perry,"] nor sell any beer, ale, or porter [or "any cider or perry,"] knowing the same to have been fraudulently diluted, deteriorated, or adulterated, nor use, in selling any beer, ale, or porter [or "any cider or perry,"] any measures which are not of the legal standard, or wilfully or knowingly permit any drunkenness, or any violent, or quarrelsome, or other disorderly conduct in his [or "her,"] house or premises, nor knowingly suffer any unlawful games or any gaming whatsoever therein, nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein, but do maintain good order and rule therein ; and all provisions for billeting officers and soldiers in victualling houses contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this license ; and this license shall continue in force from the day of next until the day of then next ensuing, and no longer ; provided and upon condition, that the said A. B. shall not in the mean time become a sheriff's officer or officer for executing the process of any court of justice ; nor shall the said A. B. in the meantime cease to be rated to the relief of the poor in respect to the said house and premises ; and this license shall cease and determine and shall become void in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. B. Given under our hands and seals, [or "my hand and seal,"] this day of , one thousand eight hundred and at .

(a) The 4 & 5 Will. IV. c. 85, gives this form, (see *ante*, 71.) The clause in the license prohibiting the sale of beer within certain hours, is here also

omitted for the reasons stated in note (a), *supra*. So also is the allegation of the execution of a bond, see 30 & 31 Vict. c. 90, s. 13.

The general forms given in the schedule to 11 & 12 Vict. c. 43, may be used in case of offences not being excise offences, against this Act. (*Reg. v. Bakewell*, 26 L. J. M. C. 12. See tit. "Conviction," "Commitment.")

16. Forms as to Beer Houses.

— } BE it remembered, that on this day of , in the to wit. } year , E. F., of , personally came before me J. P., Esquire, one of Her Majesty's justices of the peace in and for the said county, and informed me that, [here state the offence as in the following forms,] whereby the said A. B. has forfeited the sum of , the same being his first [or "second," or "third,"] offence against the provisions of the statutes to permit the general sale of beer and cider by retail in England, and hereupon the said E. F. prayeth that the said A. B. may be convicted of the said offence, and that the said penalty [or "penalty and forfeiture,"] may be awarded accordingly, with costs, according to the said statute, and that the said A. B. may be summoned before two of Her Majesty's justices in petty sessions for the , to answer the said information and make his defence thereto. Before me, J. P., &c. E. F.

(7.) General form of information for an offence under 1 Will. IV. c. 64, or 4 & 5 Will. IV. c. 85, or 3 & 4 Vict. c. 61.

County of } TO A. O. of the [parish] of , in the said county, and also to the constable of the said [parish] of , and all others whom it may concern :

(8.) General form of summons on such information (a).

WHEREAS an information hath been this day exhibited by E. F., of , in the county , before me, J. P., Esquire, one of Her Majesty's justices of the peace acting in and for the said county, setting forth that : [here copy the information stating the offender throughout in the second person, and the prayer of the information in the past tense, and conclude thus:] these are therefore to summon and require you, the said A. B., to appear before me and such other of Her Majesty's justices of the peace for the said county in petty sessions as may be then and there present, on the day of next ensuing, at the hour of in the forenoon of the same day, at , in the said county of , to answer the matter of complaint contained in the said information, and to show cause, if any you have, why you should not be convicted of the said offence charged in the said information ; and I do authorise you, the said constable, to serve this my summons, and to require you to attend me at the time and place last above-mentioned, then and there to make a return to me of the execution of this summons. Herein fail you not. Given under my hand and seal, at , in the said county, the day of in the year of our Lord 18 J. P. (L. S.)

The 11 Geo. IV. & 1 Will. IV. c. 64, s. 25, gives the following general form of conviction to be used for offences or penalties under that Act, and enacts that it shall be sufficient without particularly stating the case or facts in evidence. (See the enactment, *ante*, 86.) It may also be adopted for an offence against the 4 & 5 Will. IV. c. 85, or the 3 & 4 Vict. c. 61. As to the validity and construction of this form, see *Wray v. Toke*, 12 Q. B. 492; 17 L. J. M. C. 183.

(9.) General form of conviction.

The forms given in the schedule to 11 & 12 Vict. c. 43, may also be adopted. (*Reg. v. Bakewell*, 26 L. J. M. C. 12). See also tit. "Conviction," "Commitment."

— } BE it remembered, that, on this day of in the to wit. } year , A. B., of was duly convicted before us, C. D. and E. F., two of Her Majesty's justices of the peace in petty sessions for the of , for that : [here state the offence, and the time and place when committed:] whereby the said A. B. has forfeited the sum of , this being adjudged to be the first [or "second," or "third,"] offence [as the case shall happen to be,] against the provisions of an act to permit the general sale of beer

(a) By 4 & 5 Will. IV. c. 85, s. 22, *ante*, 85, it must be served by some constable, special constable, police or

other officer. See other forms, *post* "Conviction."

16. Forms as to Beer Houses.

and cider by retail in England, besides the costs of this conviction, which we, the said justices, do hereby assess at the sum of _____, pursuant to the statute in such case made and provided. Given under our hands and seals, the day and year above written.

(10.) Information or conviction on 1 Will. IV. c. 64, s. 6, and 4 & 5 Will. IV. c. 85, s. 13, for not putting up a descriptive board, ante, 78.

[State the formal parts of the information, as ante, (No. 7,) or of the conviction, as *supra*. State the offence thus:] for that the said A. B., being licensed to sell beer, ale, and porter, [or "cider and perry," if the fact,] by retail, in the dwelling-house of the said A. B., in _____ street, in the parish of _____, in the county of _____, and in the premises thereunto belonging, [and if the fact, add "in order that it might be consumed in the said dwelling-house and in the premises thereunto belonging,"] under the provisions of an act to permit the general sale of beer and cider by retail in England, made and passed in the first year of the reign of our Lord the late King William the Fourth, [and also under the provisions of an act made and passed in the fifth year of the same reign, to amend that act passed in the first year of the reign aforesaid,] on _____, at _____, whilst he continued so licensed as aforesaid, did not preserve or keep up, painted in letters three inches or more in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board placed over the door of the house or premises situated at _____, in which the said A. B. was so licensed to sell beer, ale, and porter [or "cider and perry,"] by retail, the Christian and surname of the said A. B., the person mentioned in such license, at full length, together with the words "licensed to sell beer [or "cider"] by retail, not to be drunk on the premises," [or according to the fact whether the license be so, "licensed to sell beer [or "cider"] by retail to be drunk on the premises,"] according to the said statutes, contrary to the form of the said statutes, whereby, &c. [conclude, if an information, as in general form of information, ante, (No. 7,) or, if a conviction, as in form, *infra*.]

(11.) Information or conviction on 4 & 5 Will. IV. c. 85, s. 17, for selling beer, &c., without a license, the beer not being to be drunk on the premises where sold, ante, 82 (a).

[For the formal parts of the information or conviction, see post, "Excise, "Convictions for Offences against," Vol. II. State the offence thus:] that the said A. B., not being duly licensed to sell beer [or "cider," or "perry,"] as the keeper of a common inn, alehouse, or victualling house, did, to wit, on _____, at _____, in a certain house and premises, situate in _____ street, in the parish of _____, in the county aforesaid, sell to one G. H. [or "to a certain person unknown,"] certain beer [or "cider," or "perry,"] to wit, one quart of beer [or "cider," or "perry," as the case is,] by retail, not to be drunk or consumed in or upon the said house or premises, [or "did sell certain beer,"] [or "cider,"] by retail, to wit, one quart, &c., to be consumed in or upon the said house and premises, the said A. B. not then having an excise retail license in force, authorising him so to do, contrary to the form of the statute in such case made and provided, whereby, &c. [conclude as usual, twenty pounds penalty, and five pounds penalty in addition, by 3 & 4 Vict. c. 61, s. 13, ante, 83.]

(12.) The like, for selling wine and spirits in a house licensed only to sell beer, &c., ante, 83 (b).

[For the formal parts of the information or conviction, see post, "Excise," "Convictions for Offences against," Vol. II. State the offence thus:] that the said A. B. being, at the time of the committing the offence hereinafter mentioned, duly licensed under the provisions of the statute in such case made and provided, to sell beer [or "cider," or "perry,"] by retail, and not being duly licensed as the keeper of a common inn, alehouse, and victualling house, in a certain house and premises at _____, did, to wit, on _____, there suffer certain wine and spirits, to wit, one bottle of wine and one pint of spirits to be brought into the said house and premises, to be drunk and consumed therein [or "did then and there suffer certain wine and spirits, to wit, &c., to be drunk and consumed in his said house and premises by," &c., or "did receive into," or "keep," or "have in his

(a) This offence is an excise offence, and the forms to 11 & 12 Vict. c. 43, are, therefore, not applicable, except

as to the additional penalty under 3 & 4 Vict. c. 61, s. 13, *supra*.

(b) See note (a) to form (11.)

possession in a certain cellar entered for storing" or "retailing beer," or "cider,"] certain wine [or "spirits,"] to wit, &c., without being licensed so to do, contrary to the form of the statutes in that case made and provided, whereby, &c. [conclude as usual. If under 3 & 4 Vict. c. 61, s. 10, the license is to be adjudged void.]

16. Forms as to Beer Houses.

[State the formal part of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that within thirty days now last past, to wit, on &c., at &c., the said A. B. being a person licensed under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England [if licensed also under the 4 & 5 Will. IV. c. 85, see the preceding form,] to sell beer [or "cider and perry," if the fact,] by retail, did sell and dispose of to one G. H. [or "a certain person unknown,"] by retail, a certain quantity of beer, being a quantity not less than half a pint, to wit, [one pint of ale], in a pint measure and vessel not sized according to the standard, contrary to the form of the statute in such case made and provided, whereby the said illegal measure hath become forfeited, and whereby, &c. [conclude, if an information, as in general form of information, *ante*, (No. 7,) or if a conviction, as in conviction, *ante*, (No. 9.) (a)]*

(13.) Information or conviction for selling beer, &c., otherwise than in standard measures, *ante*, 80.

[State the formal parts of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that the said A. B., being a seller of beer [or "cider and perry," if the fact,] by retail, and being licensed under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England, [or if licensed under the 4 & 5 Will. IV. c. 85, see form, supra, No. 12,] to wit, on , at , did permit a certain person, to wit, one G. H. [or "a certain person unknown,"] to be guilty of drunkenness [and disorderly conduct] in a certain house and premises, situate at being the house and premises mentioned in such license, and wherein the said A. B. was so licensed to sell beer [or "cider and perry,"] as aforesaid, contrary to the form of the statute in such case made and provided, whereby, &c. [conclude, if an information, as in general form of information, *ante*, (No. 7,) or if a conviction, as in conviction, *ante*, (No. 9.) (b)]*

(14.) Information or conviction for permitting drunkenness or disorderly conduct in a licensed house, *ante*, 81.

[Proceed as in the above form, but after stating the forfeiture of the penalty and costs, and adjudication thereof, state the adjudication as to the disqualification of the offender from selling beer thus:] *and we, the said J. P. and I. O., do hereby further adjudge that the said A. B. shall be disqualified from selling beer, ale, and porter [or "cider" or "perry," as the case is,] by retail, for the space of two years next ensuing this conviction; and also [if the justices think fit] we do hereby further adjudge, that no beer, ale, or porter [or "cider" or "perry," as the case may be,] shall be sold by retail by any person or persons in the house or premises situate at, &c., being the house and premises mentioned in the said license of the said A. B. Given under our hands and seals the day and year first above written.*

(15.) The like, where party guilty of a like *third* offence, and magistrate adjudged the offender disqualified from selling beer for two years, &c.

(a) It is to be remembered that no person forfeits his license for a *first* offence against the tenor of his license, and no license is forfeited for any offence unless so adjudged. (3 & 4 Vict. c. 61, s. 17, *ante*, 77.)

(b) The act, it will be seen, enacts also, that any person concerned in the breach of the conditions of the license, shall be deemed guilty of disorderly

conduct. It is not, it should seem, necessary, however, to set out the nature of the breach in a conviction for such offence: the above form would suffice. But as this may admit of some doubt, it would be as well perhaps to insert the particulars of the breach of the license, as in form, *post*, No. 16.

16. *Forms as to Beer Houses.*

(16.) Information or conviction on 1 Will. IV. c. 64, s. 13, for an offence against tenor of license, *ante*, 81.

[State the formal parts of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that the said A. B., being a seller of beer [or "cider and perry;"] by retail, having a license under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England, [or if licensed under the 4 & 5 Will. IV. c. 85, see form, supra, (No. 12,)] to wit, on* _____ *, did transgress and neglect [or "was a party in transgressing and neglecting," or "did allow to be transgressed and neglected,"] the conditions and provisions specified in such license in the house and premises situate at* _____ *, licensed and specified in and by such license, that is to say, by then and there knowingly suffering certain unlawful games [or "gaming;"] to wit, an unlawful game of rouge et noir, and an unlawful game called hazard, to be played in the said house and premises, [state any other offence against the tenor of the license in this way,] against the tenor of the said license and against the form of the statute in such case made and provided, whereby, &c. [conclude, if an information, as in general form of information, *ante*, (No. 7,) or if a conviction, as in conviction, *ante*, (No. 9.)]*

(17.) Information or conviction for selling adulterated beer, *ante*, 82.

[State the formal parts of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that the said A. B., being a seller of beer, ale, or porter, [or "cider and perry;"] by retail, having a license under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England, [or if licensed under the 4 & 5 Will. IV. c. 85, see form, supra, (No. 12,)] to wit, on* _____ *, at* _____ *, did knowingly sell, to wit, to one G. H. [or "to a certain person unknown;"] certain beer, to wit, [one pint of ale,] made otherwise than from malt and hops, that is to say, made of, &c., [here set out generally what it was made of, but if it cannot be ascertained what it was made of, omit this averment,] contrary to the form of the statute in such case made and provided, whereby, &c. [conclude, if an information, as in general form of information, *ante*, (No. 7,) or if a conviction, as in conviction, *ante*, (No. 9.)]*

(18.) The like, for mixing drugs in beer.

[State the formal parts of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that the said A. B., being a seller of beer, ale, and porter [or "cider and perry;"] by retail, having a license under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England, [or if licensed under the 4 & 5 Will. IV. c. 85, see form, supra, (No. 12,)] to wit, on* _____ *, at* _____ *, did mix and cause to be mixed divers drugs and other pernicious ingredients, to wit, [here set out the ingredients shortly, perhaps the precise description of them might be omitted altogether,] with a certain beer, to wit, [one barrel of ale,] and did then and there in the house and premises of the said A. B., situate at* _____ *, mentioned in and licensed by the said license, sell a certain quantity, to wit, [one pint,] of the said beer so mixed with the said drugs and ingredients, to one G. H. [or "to a certain person unknown;"] contrary to the form of the statute in such case made and provided, whereby, &c. [conclude, if an information, as in general form of information, *ante*, (No. 7,) or if a conviction, as in conviction, *ante*, (No. 9.)]*

(19.) The like, for adulterating beer.

[State the formal parts of the information, as *ante*, (No. 7,) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that the said A. B., being a seller of beer, ale, and porter [or "cider and perry;"] by retail, having a license under the provisions of an act passed in the first year of the reign of our Lord the late King William the Fourth, to permit the general sale of beer and cider by retail in England, [or if licensed under the 4 & 5 Will. IV. c. 85, see the form, (No. 12,)] to wit, on* _____ *, at* _____ *, did fraudulently dilute and adulterate with* _____ *certain beer, to wit, [one barrel of porter,] and did then and there, in the house and premises of the said A. B., situate at, &c., mentioned in and licensed by the said license, sell a certain quantity, to wit, [one pint,] of the said beer, so diluted and adulterated, to one G. H., [or "to a certain person*

unknown,"] *contrary to the form of the statute in such case made and provided, whereby, &c.*, [conclude, if an information, as in general form, *ante*, (No. 7.) or if a conviction, as in form, *ante*, (No. 9.)]

16. *Forms as to Beer Houses.*

[State the formal parts of the information, as *ante*, (No. 7.) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that one* _____, *of the parish of* _____, *in the said county of* _____, *being at the time of committing the offence hereinafter-mentioned a person licensed to sell beer, ale, and porter [or "cider and perry,"] by retail, under the provisions of the statutes to permit the general sale of beer and cider by retail in England in such case made and provided, did, at the parish of* _____, *aforsaid, in the county of* _____, *aforsaid, unlawfully have and keep his house, commonly called and known by name and sign of* _____, *situate in the said parish of* _____, *in the division of* _____, *in the said county of* _____, *being the house mentioned in his license, open for the sale of beer [or "cider,"] by retail, [or "did sell and retail beer," or "cider,"] to wit,* _____, *pints thereof, at his said house, [or "did supply beer" or "cider,"] to be drunk and consumed by A. B., &c., [or "divers persons unknown,"] at his said house, after ten of the clock in the evening of a certain day in the week, to wit, Monday, the _____ day of _____, in the year aforsaid, to wit, from the hour of eleven of the clock to half-past eleven of the clock, in the evening of the said day, the said parish of* _____, *and said house of the said* _____, *not being within the cities of London or Westminster, or within the boundaries of any of the boroughs of Marylebone, Finsbury, the Tower Hamlets, Lambeth, or Southwark, as defined by an act passed in the session of parliament held in the second and third years of the reign of his late Majesty King William the Fourth, intituled, "An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs in England and Wales, in so far as respects the Election of Members to serve in Parliament," and not being within the bills of mortality, and the said house of the said* _____, *not being within any city, cinque port, town corporate, parish or place, the population of which, according to the last parliamentary census, exceeds two thousand five hundred persons, and not being within one mile measured by the nearest public street or path, according to the statute in such case made and provided, from any polling place used at the last election for any town having the like population and returning a member or members to serve in parliament, contrary to the form of the statute in such case made and provided, &c.* [conclude, if an information, as in general form of information, *ante*, (No. 7.) or if a conviction, as in conviction, *ante*, (No. 9.)]

(20.) Information or conviction on 3 & 4 Vict. c. 61, s. 15, for selling beer, &c., after the hour appointed for closing the house elsewhere than in London and Westminster, the metropolitan boroughs, &c., &c., *ante*, 79.

[State the formal parts of the information, as *ante*, (No. 7.) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that one* _____, *of the parish of* _____, *in the city of London [or "Westminster,"] being at the time of the committing the offence hereinafter mentioned a person licensed to sell beer, ale, and porter, [or "cider and perry,"] by retail, under the provisions of the statutes to permit the general sale of beer and cider by retail in England in such case made and provided, did at the parish of* _____, *in the city of London [or "Westminster"] unlawfully have and keep his house, commonly known by the name and sign of* _____, *situate [as aforsaid,] being the house mentioned in his said license, open for the sale of beer [or "cider,"] by retail, [or "did sell and retail beer" or "cider,"] to wit,* _____, *pints thereof, at his said house, [or "did suffer beer" or "cider" to be drunk and consumed by A. B. or "divers persons unknown,"] at his said house, before the hour of five o'clock in the morning, [or "after the hour of twelve of the clock at night"] of a certain day in the week, to wit, Monday, the _____ day of _____, in the year aforsaid, to wit, from the hour of _____ of the clock to _____ of the clock on the said day, contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude, if an information, as in general form of information, *ante*, (No. 7.) or if a conviction, as in conviction, *ante*, (No. 9.)]

(21.) The like, for selling beer, &c., in London or Westminster, or within the boundaries of the metropolitan boroughs, &c., at improper hours, &c., *ante*, 78.

[State the formal parts of the information, as *ante*, (No. 7.) or of the conviction, as *ante*, (No. 9.) State the offence thus:] *that A. W. of* _____, *in the said county, labourer, was on the _____ day of _____ instant, duly*

(22.) Information or conviction against a witness

16. *Forms
as to Beer
Houses.*

for not appearing
to give evidence,
ante, 85 (a).

summoned as a witness to give evidence before J. P. and K. P. Esquires, two of her Majesty's justices of the peace in petty sessions, acting in and for the said county, [or as the case may be,] at _____ in the said county, on the _____ day of _____ aforesaid, at the hour of [twelve in the forenoon] of the same day, on the part of one A. B. [the complainant, or the person accused,] touching a complaint against B. A. of _____ in the said county, alehouse-keeper, victualler, and retailer of beer and ale, [or "cider and perry," [as the case may be,] for, &c. [here state the alleged offence concisely,] contrary to the form of the statute in such case made and provided; but that the said A. W. did wilfully neglect and refuse to appear at such time and place as aforesaid for the purpose aforesaid, and did not assign nor did there appear any reasonable excuse for such his neglect and refusal, whereby and for which neglect and refusal he hath forfeited a sum not exceeding ten pounds, to be awarded on conviction as may be thought fit [conclude, if an information, as *ante*, (No. 7.) or if a conviction, as *ante*, (No. 9.)]

The forms relative to appeals in general will be found, *post*, tit. "Appeal," Vol. I., and may be readily adapted to an appeal under the 1 Will. IV. c. 64; or 4 & 5 Will. IV. c. 85, which only lies against a conviction for a third offence. See the 16th section of the 1 Will. IV. c. 64, *ante*, 87.

(23.) Notice, &c.,
of appeal.

To _____ and _____, justices of the peace acting in and for the Western division of _____, in the county of _____, and such other justices of the peace acting in and for the said division in the said county, as were present at a petty sessions held at _____, in and for the division aforesaid, in the county aforesaid, on the _____ day of _____, A.D. _____.

Whereas by an order made by you or some of you on the said _____ day of _____, at the said petty sessions of her Majesty's justices of the peace acting in and for the said division in the county aforesaid, holden at _____ aforesaid, you or some of you did under colour of an Act passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled, "An Act to amend an Act passed in the first year of the reign of his present Majesty, to permit the general Sale of Beer and Cider by Retail in England," order [here state order or determination appealed against]. And this is to give you, and each and every of you, notice, that I., A. B. residing at the town of W. in the parish of B. in the county aforesaid, retail brewer, and having a house and premises situate at W. aforesaid, licensed to sell beer under the said Act, and selling beer by retail therein, being a party aggrieved by the said order, do intend to appeal against such order to the justices of the peace in the next quarter sessions assembled and to be holden in and for the said county at _____. And take notice that I am a party aggrieved by the said order, amongst other reasons, on account of [here state grounds]. Dated this _____ day of _____, A.D. 18 ____.

Yours, &c.

A. B. of _____

(24.) Recogni-
sance on appeal
against convic-
tion, *ante*, 87.

County of } BE it remembered, that on the _____ day of _____, in the _____ year of the reign of our sovereign Lady Victoria of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, B. A. of _____ in the said county, alehouse keeper, [or "victualler," as the case may be,] C. D. of _____, in the county of _____, yeoman, and J. D. of the same place, yeoman, personally came before us, J. P. and K. P., Esquires, two of the justices of our said lady the queen assigned to keep the peace of the said county and acting in petty sessions for _____, and acknowledged themselves to owe to our said lady the queen, that is to say, the said B. A. the sum of _____ pounds, and the said C. D. and J. D. each the sum of _____ pounds separately, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our

(a) As to this, see also the provisions of 11 & 12 Vict. c. 43, tit. "Conviction," "Commitment."

said lady the queen, her heirs and successors, if the said B. A. shall make default in the condition hereon indorsed, [or "hereunder written."]

Whereas the said B. A. was this day duly convicted before us the justices aforesaid, of having on, &c. [state the offence shortly from the conviction,] being for his third offence, whereby and for which offence he the said B. A. hath forfeited the sum of _____ pounds: Now the condition of the above [or "within"] written recognizance is such, that if the said B. A. shall duly prosecute an appeal against the said conviction at the next general [or "quarter"] sessions of the peace to be holden at _____, in and for the said [county] of _____ aforesaid, and in case the said B. A. shall forthwith abide the judgment of the court thereupon, and pay such, or cause to be paid the costs as by the said court shall be awarded, then the said recognizance to be void, or else remain in full force.

Taken and acknowledged the day and year first
above [or "within"] written before us,

J. P.
K. P.

16. Forms as to Public Houses.

County of } BE it remembered, that on the _____ day of _____, in the
} year of the reign of our sovereign Lady Victoria, of the
United Kingdom of Great Britain and Ireland Queen, Defender of the Faith,
A. I. of _____, in the county of _____, labourer, came before us, J. P.
and J. O., Esquires, two of her Majesty's justices of the peace for the said county
of _____, and acknowledged to owe to our said lady the queen the sum of _____
of lawful money of Great Britain, to be levied of his goods and chattels,
lands and tenements, to the use of our said lady the queen, her heirs and successors,
if the said A. I. shall make default in the condition following:

Whereas the above bound A. I. on the _____ day of _____ instant,
came before me J. P. one of the said justices, and gave me to understand and be
informed that one A. O. [here follow the words of the information,] whereby he
has forfeited the sum of _____, being for his third offence: Now the condition of
this recognizance is such, that if the above bound A. I. shall appear at the next general
quarter sessions [or "next general sessions"] of the peace to be holden at
in and for the said county, [riding, city, liberty, town corporate, or place, as the
case may be,] then and there to give evidence against the said A. O. so complained
of and informed against, and not to depart without leave of the court, then this
recognizance to be void.

Acknowledged before us, the day
and year first above written.

J. P.
J. O.

The form of the warrant of distress in pursuance of the 21st section of the 1 Will. IV. c. 64, *ante*, 89, may be collected from the above forms of informations, and the general form of a warrant of distress, *post*, tit. "Warrant," Vol. V.

(25.) Recognizance to bind informer to appear at sessions on an appeal, *ante*, 87.

The form of the warrant of commitment in pursuance of the 21st section of the 1 Will. IV. c. 64, may be collected from the above forms of informations, and the general form of a warrant of commitment, *ante*, 9, see the 27th section of the 1 Will. IV. c. 64, providing for the validity of the commitment, though informal, *ante*, 87.

(26.) Warrant of distress under 1 Will. IV. c. 64, s. 4 & 5 Will. IV. c. 85.

(2.) FORMS RELATIVE TO THE WINE, SPIRIT AND BEER, &c., LICENSE, UNDER 9 GEO. IV. c. 61.

County of } TO A. B., Gentleman, High Constable of the division [or "hundred"
} &c."] of _____ within the said county.

We, the majority of justices present at a petty session of the justices in the division

(27.) Warrant of commitment under same Acts.

(28.) Precept to the high constable to order petty constables to give notice of meeting for licensing public houses under 9 Geo. IV. c. 61, s. 2. (a)

(a) The form of a precept to the high constable to give notice of an adjourned meeting under the 5th section, may be readily framed from this.

See *ante*, 96. As to who is included under high constable, see 24 & 25 Vict. c. 75, s. 2, *ante*, 94.

16. *Forms
as to Public
Houses.*

of _____, in the county aforesaid, [or "liberty of, &c." according to the fact,] held this day in pursuance of the statute in that case made and provided, do hereby appoint the _____ day of _____, at the hour of _____ of the clock of the forenoon of that day, at _____, for holding a special sessions of justices, called the general licensing meeting for the said division [or "hundred, &c."] for granting licenses for keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed upon the premises of the applicant in the said division, [or "hundred"]; and we do hereby require you, within five days after receipt hereof, to order the constables within your constable-wick to affix on the church door in their respective districts a notice of the day, hour, and place at which such meeting is to be held as aforesaid, and to give or leave a copy of such notice at the dwelling-house of every justice of the said division, [or "hundred, &c.,"] and of every innkeeper who has given notice of his intention to keep an inn and apply for an ale license within their respective districts. Dated this _____ day of _____.

A. B., C. D., E. F., G. H., &c.
[the signatures of the majority of justices.]

(29.) High constable's order to petty constables to give notice of licensing meeting, under 9 Geo. IV. c. 61, s. 2 (a).

County of _____ } BY virtue of a precept from her Majesty's justices of the
hundred [or "di- } peace acting within the said hundred [or "division"] to me
vision"] of _____ } directed; you are hereby required, on sight hereof, to affix
on the church door within your district a notice that a special session of justices, called the general licensing meeting, will be holden on the _____ day of _____ next, at the hour of _____ of the clock of the forenoon of the same day, at _____, for granting licenses for keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed upon the premises therein to be specified; and also to leave a copy of such notice at the dwelling-house of every justice of the peace of the said division [or "hundred,"] in your district, and also at the dwelling-house of every innkeeper or person who has given notice of his intention to keep an inn and to apply for an ale license within your district.

(30.) Notice of intended application for a license to sell liquors by retail in an inn under 9 Geo. IV. c. 61 (b).

TO the Overseers of the Poor, and the constable of the ["parish"] of _____ and to all whom it may concern.

I, A. B., [state the trade or occupation,] now residing at _____, in the parish of _____, in the county of _____, and for six months last past having resided at _____, in the parish of _____ [or "of _____"] do hereby give notice, that [if application is intended to be made to a special session, here state the cause for such application] it is my intention to apply at the general annual licensing meeting [or "at the special session"] to be holden at _____, on the _____ day of _____ next ensuing, for a license to sell exciseable liquors by retail, to be drunk or consumed in the houses or premises thereunto belonging, situate at [here describe the house intended to be opened, specifying the situation of it, the person of whom rented, the present or late occupier, whether kept or used as an inn, alehouse, or victualling-house, within the three years preceding; and if so, by whom and under what sign:] and which I intend to keep as an inn, alehouse, or victualling-house.

Given under my hand this _____ day of _____, one thousand eight hundred and _____.

N.B.—A copy of this notice to be served upon one of the overseers of the poor and upon one of the constables or other peace officers of the parish in which is situate the house intended to be opened.

(a) The form of the high constable's order to petty sessions to give notice of an adjourned sitting under the 5th

section, may be readily framed from this.

(b) This form is prescribed by the Act.

TO the Overseers of the Poor and the Constables of the ["parish"] of _____, in the county of _____, and to all whom it may concern.

I, A. B., [or "we, the executors, &c., &c., of the late A. B.,"] victualler, being authorized by virtue of the license granted to me, [or "him," or "her,"] at the general annual licensing meeting [or "special session,"] held at _____, on the _____ day of _____, one thousand eight hundred and _____, to sell exciseable liquors by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at [here describe the situation of the house] and commonly known by the sign of the _____, do hereby give notice, that it is my [or "our"] intention to apply at the special session to be holden at _____, in the county of _____, on the _____ day of _____, one thousand eight hundred and _____, for permission to transfer the above-mentioned license to C. D., [state his trade or occupation] now residing at _____, in the parish of _____, in the county of _____, and for six months last past having resided at _____, [or "in the several parishes of _____,"] in the county of _____, [or "counties of _____,"] that the said C. D. intending to keep as an inn, alehouse, or victualling-house, the said house so as aforesaid kept by me [or "us"] may sell exciseable liquors by retail, to be drunk or consumed in the said house or premises thereunto belonging.

Given under my hand this _____ day of _____, one thousand eight hundred and _____.

N.B.—A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which is situate the house kept by the person whose notice it is.

At the general annual licensing meeting [or "an adjournment of the general annual licensing meeting," or "at a special petty session,"] of her Majesty's justices of the peace, acting for the division [or "liberty, &c.," as the case made be,] of _____, in the county of _____, holden at _____, on the _____ day of _____, in the year one thousand eight hundred and _____, for the purpose of granting licenses to persons keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, we, being _____ of her Majesty's justices of the peace acting for the said county [or "liberty, &c., &c.," as the case may be,] and being the majority of those assembled at the said session, do hereby authorize and empower A. L., now dwelling at _____, in the parish of _____, and keeping [or "intending to keep"] an inn, alehouse, or victualling-house, at the sign of the _____, in the _____ of _____, in the _____ division and county aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. L. shall be licensed and empowered to sell under the authority and permission of any excise license, and to permit all such liquors to be drunk or consumed in his said house or in the premises thereunto belonging; provided that he [or "she,"] do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in selling thereof any weights or measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his [or "her"] house or premises; and do not knowingly suffer any unlawful games or any gaming whatsoever therein; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his or her house, except for the reception of travellers, nor permit or suffer any beer or other exciseable liquor to be conveyed from or out of his [or "her"] premises before the hour of half past twelve o'clock in the afternoon, or before the hours of usual termination of morning divine service in the church, chapel, kirk, or principal place of worship in the parish or place, or between the hours of three and five o'clock in the afternoon, nor after eleven o'clock in the afternoon, on Sundays, Christmas-day, or Good Friday, but do maintain good order and rule therein; and this license shall continue in force from the _____ day of _____ next until the _____ day of _____ then next ensuing, and no longer: provided that the said A. L. shall not in the mean time become a sheriff's officer, or other officer executing the process of any court of justice, in either of which cases this license shall be void. Given under our hands and seals on the day and at the place first above written.

16. Forms as to Public Houses.

(31.) Notice of intended application for permission to transfer such license under 9 Geo. IV. c. 61, s. 11 (a), ante 103.

(32.) Form of license to keep an inn, &c., under 9 Geo. IV. c. 61, ante, 101.

16. Forms as to Public Houses.

(33.) License
granted at a
special meeting,
in case of death,
&c., under
9 Geo. IV. c. 61,
s. 14, *ante*, 103.

At a special meeting of her Majesty's justices of the peace acting in and for the division of the hundred of [or "liberty, &c.," according to the fact,] in the county of , holden at , within and for the said division [or "liberty"] on the day of , one thousand eight hundred and , for the purpose of authorizing and empowering persons to open or continue open, in certain cases, common inns, alehouses, or victualling-houses.

It having been duly made to appear that at the last general annual licensing meeting [or "an adjournment of the last general annual licensing meeting," or "at a special session"] holden within the said division, for the purpose of licensing persons to keep common inns, alehouses, or victualling-houses within the said division, [or "liberty, &c.,"] A. B., of [in cases of death add "since dead,"] was authorized and empowered, at the sign of the , in the parish of , in the division [or "liberty,"] and county aforesaid, to keep a common inn, alehouse, or victualling-house, and to sell certain exciseable liquors under such authority and permission; and also that the said A. B. died on or about the day of [or "hath removed from the said house,"] or "hath yielded up the possession of the said house to C. D.," or "house hath become unoccupied," as the case may be.]

We being [number] of her Majesty's justices of the peace acting in and for the said division and county, assembled at the said special meeting, and being the majority there assembled, do authorize and empower the said C. D. (he having produced the certificate required by law) to continue open the said house as an alehouse or victualling-house, and to utter and sell therein, and in the premises thereunto belonging, and not elsewhere, victuals and all such exciseable liquors as the said A. B. hath been [in case of death "was"] licensed and empowered to sell under the authority and permission of such excise license granted and assigned as aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. B. shall be licensed and empowered to sell under the authority and permission of any excise license, and to permit all such liquors to be drunk or consumed in his said house or in the premises thereunto belonging, and that the said A. B. hath been [in case of death "was"] duly licensed and empowered. Provided that the said C. D. do not fraudulently dilute or adulterate the same, or sell the same, knowing them to have been fraudulently diluted or adulterated; and do not use in selling thereof any weights or measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his [or her] house or premises; and do not knowingly suffer any unlawful games, or any gaming whatsoever therein; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his or her house except for the reception of travellers, nor permit nor suffer beer or other exciseable liquor to be conveyed from or out of his [or her] premises [insert as *ante*, form 32] on Sundays, Christmas day, or Good Friday, but do maintain good order and rule therein; and this license shall continue in force from the day of next until the day of then next ensuing, and no longer: provided that the said C. D. shall not in the meantime become a sheriff's officer, or officer executing the process of any court of justice, in either of which cases this license shall be void. Given under our hands and seals, on the day and at the place first above written.

(34.) General
form of informa-
tion and sum-
mons for an
offence under
9 Geo. IV. c. 61.

The general form of an information or summons for an offence against the 1 Will IV. c. 64, *ante*, 137, may be adopted for an offence against the 9 Geo. IV. c. 61, *mutatis mutandis*. See also the general forms in the case of offences not being excise offences, 11 & 12 Vict. c. 43, *post*, tit. "Conviction," "Commitment."

(35.) General
form of convic-
tion on like Act.

The 32nd section of the 9 Geo. IV. c. 61, prescribes a general form of conviction for an offence against that Act, and the same should therefore be adopted. See the form, *ante*, 110. See also *post*, 11 & 12 Vict. c. 43, tit. "Conviction," "Commitment."

} BE it remembered, that on this day of , in the year
 to wit. } of our Lord , A. B. of the parish of , in the county
 , was duly convicted before C. D. and E. F. two of her Majesty's
 justices of the peace for the said county of , for that he the said A. B.
 on &c., at &c., did sell to one G. H. a certain exciseable liquor called [gin] by retail,
 that is to say, [one pint of gin,] at and for the price of, [one shilling and sixpence,]
 to be drunk and consumed in his house, situate in the parish aforesaid, in the
 county aforesaid, without being duly licensed so to do, contrary to the form of the
 statute in such case made and provided; whereby the said A. B. has forfeited the
 sum of [not exceeding twenty pounds nor less than five pounds] pounds, this
 being adjudged to be the [first] offence of the said A. B. against the provisions of
 an Act to regulate the granting of licenses to keepers of inns, alehouses, and
 victualling-houses in England, besides the costs of this conviction, which we, C. D.
 and E. F., the justices aforesaid, do hereby assess at the sum of shillings,
 pursuant to the statute in such case made and provided. Given under our hands
 and seals on the day and year first above written.

16. Forms
as to Public
Houses.

(36.) Conviction
on 9 Geo. IV.
c. 61, s. 18, for
selling wine and
spirits, &c., by
retail, not being
licensed, ante,
105.

} BE it remembered, that on this day of , in the year
 to wit. } of our Lord , A. B. was duly convicted before us, C. D. and
 E. F., two of her Majesty's justices of the peace for the county of , for
 that he, the said A. B., being duly licensed by a certain license to sell exciseable
 liquors in a certain victualling-house, at the sign of the , in the parish
 of , in the county of , specified in the said license, did, on
 &c., at &c., sell to one G. H. a certain exciseable liquor called [gin] by retail, that
 is to say, [one pint of gin,] at and for the price of, [one shilling and sixpence,] to
 be drunk and consumed in his house, situate in the parish aforesaid, not being the
 house or premises specified in such his license, or any part or portion thereof, con-
 trary to the form of the statute in such case made and provided; whereby the said
 G. H. has forfeited the sum of [not more than twenty pounds nor less than five
 pounds] pounds, this being adjudged to be the [first] offence against the provisions
 of an Act to regulate the granting of licenses to keepers of inns, alehouses, and
 victualling-houses in England, besides the costs of this conviction, which we, the
 said C. D. and E. F., the said justices, do hereby assess at the sum of
 shillings, pursuant to the statute in such case made and provided. Given under
 our hands and seals, on the day and year first above written.

(37.) Conviction
on like Act of a
licensed publican
for selling an
exciseable liquor
in premises not
being those
licensed, ante,
105.

} BE it remembered, that on this day of , in the year
 to wit. } of our Lord , A. B. of , victualler, was duly con-
 victed before C. D. and E. F. two of her Majesty's justices of the peace for the
 county of , acting for the division of , for that he the said
 A. B. being duly licensed under the Act made and passed in the ninth year of the
 reign of his late Majesty King George the Fourth, to regulate the granting of
 licenses to keepers of inns, alehouses, and victualling-houses in England, to sell
 exciseable liquors by retail, to be drunk or consumed in his house or premises,
 situate, to wit, in the parish of , in the county aforesaid, to wit, on, &c.,
 at, &c., aforesaid, on being then and there required by one E. F. to sell and dispose
 of to him a certain quantity of an exciseable liquor, to wit [one pint of gin] (not
 being a quantity less than half a pint) by retail therein, by a pint measure sized
 according to the standard, for a certain price, to wit, [the sum of one shilling and
 sixpence,] did sell and dispose of to the said E. F. the said quantity of a [pint of
 gin] by a [pint] measure not sized according to the standard, contrary to the form
 of the said statute, and whereby the said A. B. hath forfeited the said illegal pint
 measure, and also the sum of shillings [not exceeding 40s.] this being
 adjudged, &c. [Conclude as in form (No. 37.)]

(38.) Conviction
on like Act, s. 19,
of a licensed
person for not
using the
standard mea-
sures, ante, 107.

16. *Forms as to Public Houses.*

(39.) Conviction on like Act, s. 21, of a licensed publican, for a first or second offence against the tenor of his license (a), *ante*, 107.

BE it remembered, that on this day of , in the year , A. B. of , victualler, was duly convicted before C. D. and E. F. two of her Majesty's justices of the peace for the county of , for that he the said A. B. acting for the [division] of , being licensed under the statute made and passed in the ninth year of the reign of his late Majesty King George the Fourth, to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England, to keep an inn, alehouse, or victualling house at the sign of the , in the parish of , in the [division] aforesaid of the county aforesaid, did, on, &c., at, &c. [here state the offence, which may be thus, "knowingly suffer certain unlawful games, that is to say, a certain unlawful game called rouge et noir, and a certain unlawful game called hazard, to be played in the house so licensed aforesaid"] against the tenor of the license so to him granted as aforesaid, and against the provisions of the said Act relative to the maintenance of good order and rule; whereby the said A. B. has forfeited the sum of , this being adjudged to be the first [or "second," as the case may be] offence of the said A. B. against the said provisions of the said Act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England, besides the costs of this conviction, which we, C. D. and E. F., the said justices, do hereby assess at the sum of [twenty] shillings, pursuant to the statute in such case made and provided. Given, &c.

(40.) Notice of appeal.
Recognizance.
Warrant of distress.
Commitment, &c.

The forms of notice of appeal, recognizance thereon, warrant of distress and commitment, &c., may be readily framed by those directed, *ante* (Nos. 23, 24, 35, 26, 27).

(3.) MISCELLANEOUS.

(41.) Indictment for selling ale on a Sunday.

— (venue) THE jurors for our Lady the Queen upon their oath present, that A. B., on the day of , in the year of our Lord , being a common Sabbath breaker and profaner of the Lord's day, on, &c., and on divers other days respectively, being the Lord's day, and between that day and the day of the taking of the said inquisition, during the time of divine service on each of the said respective days, to wit, at the hour of twelve on each of those days at the parish aforesaid, in the county aforesaid, in the dwelling-house of him the said A. B. there situate, being a common tippling-house, did openly sell and utter and cause to be sold and uttered ale and beer and other liquors to divers idle and ill-disposed persons, whose names to the jurors aforesaid are as yet unknown, and that the said A. B. on the said, &c., and on divers other days, during the time of divine service on each respective day, at, &c., in his said dwelling-house, did unlawfully and wilfully permit and suffer divers idle and ill-disposed persons, whose names to the jurors aforesaid are as yet unknown, to remain and continue drinking and tippling, to the common nuisance of her Majesty's liege subjects, to the evil example of all others, and against the peace of our said Lady the Queen, her crown and dignity.

(a) See forms on 1 Will. IV. c. 64, *ante* (Nos. 14, 15, 16); see the form of license, *ante* (No. 32).

Aliens. (a)

[6 Will. IV. c. 11; 7 & 8 Vict. c. 66; 10 & 11 Vict. c. 83.]

- I. *General Observations as to*, 149.
 II. *The Registration of*, 150.
 III. *Rights, Capacity, and Naturalization of*, 152.
 IV. *Trial and Disqualification of, as Jurors, &c.*, 155.

I. General Observations as to.

AN alien, generally speaking, is one born in a foreign country, out of the allegiance of the king. (See 1 *Steph. Com.* 134, 4th ed.; 2 *ibid.* 411, 413, 415.) (b) Who are.

The privileges and disabilities of aliens, which will be here noticed, are—(1) As respects the registration of them; (2) Their rights, capacities, and naturalization; and (3) As respects their offences and trial, and qualifications as jurors and witnesses.

(a) As to aliens in general, see 2 *Steph. Com.* 416, 4th ed.

(b) Natural-born subjects are persons born within the allegiance, power, or protection of the crown of England, which terms embrace not only persons born within the dominions of his Majesty or of his homagers, and the children of subjects in the service of the King abroad, and the King's children, and the heirs of the crown, all of whom are natural-born subjects by the common law, but also, under various statutes, (viz., 7 Ann. c. 5; 4 Geo. II. c. 21; 13 Geo. III. c. 27,) all persons, though born abroad, whose fathers, or grandfathers by the father's side, were natural-born subjects at common law, unless the father or paternal grandfather, through whom the claim is made, was at the time of the birth of such children liable, in case of his return into this country, to the penalties of treason or felony, or was in the actual service of any foreign prince then at enmity with the crown of England, excepting always, for the benefit both of the common law and of the statutes, those artificers and manufacturers who are declared aliens by 5 Geo. I. c. 27; see 1 *Steph. Com.* 134, 4th ed.; 4 *ibid.* 411, 413, 415; and see 7 & 8 Vict. c. 66, s. 3, *post*, 152. Artificers, however, may now go abroad, 5 Geo. IV. c. 97.

Persons born in transmarine territories belonging to the King of Eng-

land in any other right than that of the *English crown*, as, for instance, the Hanoverians and persons doing service to the King as officers of such transmarine territories, are not natural-born subjects, see *Craw v. Ramsey, Vaughan*, 286.

A child born out of the allegiance of the Crown of England is not entitled to be deemed a natural-born subject unless the father be at the time of the birth of the child not a subject only but a subject by birth. Therefore, children born in the United States of America since the recognition of their independence, of parents born there before that time, and continuing to reside there afterwards, are aliens, and cannot inherit lands here. (*Doe d. Thomas v. Acklam*, 2 *Barn & Cress*. 779; 4 *D. & R.* 394, *S. C.*)

But children born in America since the recognition of their independence, of parents who resided there before, but who were natural-born British subjects, and at the time of the separation of the two countries adhered to the British government, are not aliens, and are capable of inheriting lands here. (*Doe d. Auchmuty v. Mulcaster*, 5 *B. & C.* 771; 8 *D. & R.* 593, *S. C.*; and see *Doe d. Birtwistle v. Vardill*, 8 *D. & R.* 185. As to who is an American citizen, see *Rex v. Bruce*, 2 *C. & J.* 436; and see further, *Doe d. Stansbury v. Arkwright*, 5 *C. & P.* 575; *Sutton v. Sutton*, 1 *Russ. & M.* 663.)

2. *Registration of, &c.*

II. *Regulations as to Registration of Aliens.*

6 Will. IV. c. 11.
7 Geo. IV. c. 51,
repealed.

Master of vessels
arriving from
foreign parts to
declare what
aliens are on
board or have
landed from their
vessels.

Penalty for omis-
sion of declara-
tion.

Not to extend to
foreign mariners
navigating the
vessel.

Alien on arrival
from abroad to
declare his name,
description, &c.,
and produce his
passport.

Officer of customs
to register the
declaration, and
deliver a cer-
tificate to the
alien.

Officer of customs
to transmit de-

By stat. 6 Will. IV. c. 11, intituled, "An Act for the Registration of Aliens, and to repeal an Act passed in the Seventh Year of the Reign of his late Majesty for that purpose," [19th May, 1836,] reciting, "Whereas in the seventh year of the reign of his late Majesty an Act was passed, intituled 'An Act for the Registration of Aliens,' and whereas it is expedient that the said Act should be repealed, and that provisions in respect of aliens should be made in lieu of the regulations therein contained: it is therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said Act shall be and is hereby repealed."

Sect. 2. "The master of every vessel which, after the commencement of this Act, shall arrive in this realm from foreign parts, shall immediately on his arrival declare in writing, to the chief officer of the customs at the port of arrival, whether there is, to the best of his knowledge, any alien on board his vessel, and whether any alien hath, to his knowledge, landed therefrom at any place within this realm, and shall in his said declaration specify the number of aliens (if any) on board his vessel, or who have, to his knowledge, landed therefrom, and their names, rank, occupation, and description, as far as he shall be informed thereof; and if the master of any such vessel shall refuse or neglect to make such declaration, or shall wilfully make a false declaration, he shall for every such offence forfeit the sum of twenty pounds, and the further sum of ten pounds for each alien who shall have been on board at the time of the arrival of such vessel, or who shall have, to his knowledge, landed therefrom within this realm, whom such master shall wilfully have refused or neglected to declare; and in case such master shall neglect or refuse forthwith to pay such penalty, it shall be lawful for any officer of the customs, and he is hereby required, to detain such vessel until the same shall be paid: provided always, that nothing hereinbefore contained shall extend to any mariner actually employed in the navigation of such vessel during the time that such mariner shall remain so actually employed."

Sect. 3. "Every alien who shall after the commencement of this Act arrive in any part of the United Kingdom from foreign parts, shall immediately after such arrival present and show to the chief officer of the customs at the port of debarkation, for his inspection, any passport which may be in his or her possession, and declare in writing to such chief officer, or verbally make to him a declaration, to be by him reduced into writing, of the day and place of his or her landing, and of his or her name, and shall also declare to what country he or she belongs, and is subject, and the country and place from whence he or she shall then have come; which declaration shall be made in or reduced into such form as shall be approved by one of his Majesty's principal secretaries of state; and if any such alien coming into this realm shall neglect or refuse to present and show any passport which may be in his or her possession, or if he or she shall neglect or refuse to make such declaration, he or she shall forfeit the sum of two pounds."

Sect. 4. "The officer of the customs to whom such passport shall be shown and declaration made, shall immediately register such declaration in a book to be kept by him for that purpose (in which book certificates shall be printed in blank, and counterparts thereof, in such form as shall be approved by one of his Majesty's principal secretaries of state), and shall insert therein the several particulars by this Act required in proper columns, in both parts thereof, and shall deliver one part thereof to the alien, who shall have made such declaration."

Sect. 5. "The chief officer of the customs in every port shall within

two days transmit a true copy of the declaration of every master of a vessel, and a true copy of every such certificate, if in Great Britain, to one of his Majesty's principal secretaries of state, and if such alien shall have arrived from any foreign country in Ireland, he shall transmit a true copy of such declaration and of such certificate to the chief secretary for Ireland."

Sect. 6. "Any alien about to depart from this realm shall, before his or her embarkation, deliver any certificate which he or she shall have received under the provisions of this Act to the chief officer of the customs at the port of departure, who shall insert therein that such alien hath departed this realm, and shall forthwith transmit the same to one of his Majesty's principal secretaries of state, or to the chief secretary for Ireland, as the case may be, in the like manner as hereinbefore is directed in respect to the certificate given to an alien on his or her arrival in this realm."

Sect. 7. "If any certificate issued to any alien by virtue of this Act shall be lost, mislaid, or destroyed, and such alien shall produce to one of his Majesty's justices of the peace proof thereof, and shall make it appear to the satisfaction of such justice that he or she hath duly conformed with this Act, it shall be lawful for such justice, and he is hereby required to testify the same under his hand, and such alien shall thereupon be entitled to receive from one of his Majesty's principal secretaries of state, or from the chief secretary for Ireland, as the case may be, a fresh certificate, which shall be of the like force and effect as the certificate so lost, mislaid, or destroyed."

Sect. 8. "All certificates hereinbefore required to be given shall be given without fee or reward whatsoever, and every person who shall take any fee or reward of any alien or other person, for any certificate, or any other matter or thing done under this Act, shall forfeit for every such offence the sum of twenty pounds; and every officer of the customs who shall refuse or neglect to make such entry as aforesaid, or grant any certificate thereon, in pursuance of the provisions of this Act, or shall knowingly make any false entry, or neglect to transmit the copy thereof, or to transmit any declaration of the master of a vessel, or any declaration of departure, in manner directed by this Act, shall forfeit for every such offence the sum of twenty pounds."

Sect. 9. "If any person shall wilfully make or transmit any false declaration, or shall wilfully forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, or shall utter, knowing the same to be forged, counterfeited, or altered, any declaration or certificate hereby directed, or shall obtain any such certificate under any other name or description than the true name and description of the alien intended to be named and described, without disclosing to the person granting such certificate, the true name and description of such alien, or shall falsely pretend to be the person intended to be named and described in any such certificate, every person so offending shall, upon conviction thereof before two justices, either forfeit any sum not exceeding one hundred pounds, or be imprisoned for any time not exceeding three calendar months, at the discretion of such justices."

Sect. 10. "All offences against this Act shall be prosecuted within six calendar months after the offence committed; and all such offences shall be prosecuted before two or more justices of the peace of the place where the offence shall be committed, who are required, in default of payment of any pecuniary penalty, to commit the offender to the common gaol for any time not exceeding one calendar month, unless the penalty shall be sooner paid, where such penalty shall not exceed the sum of twenty pounds, and forthwith to report to one of his Majesty's principal secretaries of state, or to the chief secretary for Ireland, as the case may require, the conviction of every offender under this Act, and the punishment to which he is adjudged; and no writ of certiorari or of advocacy or suspension shall be allowed to remove the proceedings

2. *Registration of, &c.*

6 Will. IV. c. 11.

claration, &c., to secretary of state.

Certificate of alien departing the realm to be transmitted to secretary of state.

New certificates to be issued in lieu of such as are lost.

Certificate to be granted without fee.
Penalty.

Penalty for forging certificates, &c.

Prosecution of offences.

2. Registration of, &c.

6 Will. IV. c. 11.
Not to affect
foreign ministers
or their servants :

nor aliens who
have been resident
three years,
and obtained
certificate
thereof ;

nor aliens under
fourteen years
of age.

Commencement
of Act.

of any justices touching the cases aforesaid, or to supersede or suspend execution or other proceeding thereupon."

Sect. 11. "Provided always, and be it further enacted, that nothing in this Act contained shall affect any foreign ambassador or other public minister duly authorised, nor any domestic servant of any such foreign ambassador or public minister, registered as such according to law, or being actually attendant upon such ambassador or minister ; nor any alien who shall have been continually residing within this realm for three years next before the passing of this Act or who shall hereafter at any time complete such residence of three years, and who shall have obtained from one of his Majesty's principal secretaries of state, or from the chief secretary for Ireland, a certificate thereof : nor any alien in respect of any act done or omitted to be done, who shall be under the age of fourteen years at the time when such act was so done or omitted to be done : provided always, that if any question shall arise whether any person alleged to be an alien, and to be subject to the provisions of this Act, is an alien or not, or is or is not subject to the said provisions or any of them, the proof that such person is, or by law is to be deemed to be, a natural-born subject of his Majesty, or a denizen of this kingdom, or a naturalized subject, or that such person, if an alien, is not subject to the provisions of this Act or any of them, by reason of any exception contained in this Act or otherwise, shall lie on the person so alleged to be an alien and to be subject to the provisions of this Act."

Sect. 12. "This Act shall commence and take effect from and after the first day of July in the present year."

III. Rights and Capacities of Aliens, and Naturalization of.

7 & 8 Vict. c. 66.

By the 7 & 8 Vict. c. 66, intituled "An Act to amend the Laws relating to Aliens," [6th August, 1844,] reciting that "it is expedient that the laws now in force affecting aliens should be amended, and that her Majesty should be enabled to grant to aliens the rights and capacities of British subjects, under such regulations and with such restrictions and exceptions as are hereinafter provided ;" and, after reciting the 12 & 13 Will. III. c. 2 ; 1 Geo. I. sess. 2, c. 4 ; 14 Geo. III. c. 84, it is enacted, "that such parts of the said recited Acts of Parliament as are inconsistent with the provisions of this Act shall be repealed."

Sect. 2. "That so much of 1 Geo. I. c. 4, as provides, that no person shall hereafter be naturalized unless in the bill exhibited for that purpose there shall be a clause or particular words inserted to declare that such person shall not thereby be enabled to be of the privy council, or a member of either house of parliament, or to take any office either civil or military, or to have any grant of lands, tenements or hereditaments from the crown to himself or any other person in trust for him, and that no bill of naturalization shall hereafter be received in either house of parliament unless such clause or words be first inserted, be repealed."

Sect. 3. "That every person now born, or hereafter to be born, out of her Majesty's dominions, of a mother being a natural-born subject of the United Kingdom, shall be capable of taking to him, his heirs, executors or administrators, any estate, real or personal, by devise or purchase, or inheritance of succession."

Sect. 4. "That from and after the passing of this Act every alien, being the subject of a friendly state, shall and may take and hold, by purchase, gift, bequest, representation or otherwise, every species of personal property, except chattels real, as fully and effectually to all intents and purposes, and with the same rights, remedies, exemptions,

Provisions of
recited Acts
inconsistent
herewith re-
pealed.

Certain pro-
visions of 1 Geo.
I. c. 4, repealed.

Every person
born of a British
mother capable
of holding real
or personal
estate.

Alien friends
may hold every
species of per-
sonal property
except chattels
real.

privileges and capacities, as if he were a natural-born subject of the United Kingdom.

Sec. 5. "That every alien now residing in, or who shall hereafter come to reside in, any part of the United Kingdom, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation or otherwise, take and hold any lands, houses or other tenements, for the purpose of residence or of occupation by him or her, or his or her servants, or for the purpose of any business, trade or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually to all intents and purposes, and with the same rights, remedies, exemptions and privileges, except the right to vote at elections for members of parliament, as if he were a natural born subject of the United Kingdom."

Sec. 6. "That upon obtaining the certificate and taking the oath hereinafter prescribed every alien now residing in, or who shall hereafter come to reside in, any part of Great Britain or Ireland with intent to settle therein, shall enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit, except that such alien shall not be capable of becoming of her Majesty's privy council, nor a member of either house of parliament, nor of enjoying such other rights and capacities, if any, as shall be specially excepted in and by the certificate to be granted in manner hereinafter mentioned."

Sec. 7. "That it shall be lawful for any such alien as aforesaid to present to one of her Majesty's principal secretaries of state a memorial, stating the age, profession, trade or other occupation of the memorialist, and the duration of his residence in Great Britain or Ireland, and all other the grounds on which he seeks to obtain any of the rights and capacities of a natural-born British subject, and praying the said secretary of state to grant to the memorialist the certificate hereinafter mentioned."

Sec. 8. "That every such memorial shall be considered by the said secretary of state, who shall inquire into the circumstances of each case, and receive all such evidence as shall be offered, by affidavit or otherwise, as he may deem necessary or proper for proving the truth of the allegations contained in such memorial; and that the said secretary of state, if he shall so think fit, may issue a certificate, reciting such of the contents of the memorial as he shall consider to be true and material, and granting to the memorialist (upon his taking the oath hereinafter prescribed) all the rights and capacities of a natural-born British subject, except the capacity of being a member of the privy council or a member of either house of parliament, and except the rights and capacities (if any) specially excepted in and by such certificate."

Sec. 9. "That such certificate shall be enrolled for safe custody as of record in her Majesty's High Court of Chancery, and may be inspected, and copies thereof taken, under such regulations as the lord high chancellor shall direct" (a).

Sec. 10. "That, within sixty days from the day of the date of such certificate, every memorialist to whom rights and capacities shall be granted by such certificate shall take and subscribe the following oath: (that is to say),

'I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to her Majesty Queen Victoria, and will defend her to the utmost of my power against all conspiracies and attempts whatever which may be made against her person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies which may be formed against her or

3. Rights of, *etc.*

7 & 8 Vict. c. 66.

Subjects of a friendly state may hold lands, &c., for the purpose of residence, &c., twenty-one years.

Aliens to become naturalized upon obtaining certificate, taking prescribed oath, and becoming residents in the United Kingdom.

Aliens desirous of becoming naturalized to present a memorial.

Memorial to be considered by the secretary of state for the home department; who may issue a certificate.

Certificate to be enrolled in Court of Chancery.

Oath to be taken.

(a) See Hansard's Law of Aliens, Supplement, 67.

3. *Rights of, &c.*

7 & 8 Vict. c. 66.

them; and I do faithfully promise to maintain, support, and defend to the utmost of my power, the succession of the crown, which succession, by an Act, intituled 'An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject,' is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants, hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm. So help me God.'

Which oath shall be taken and subscribed by such memorialist, and shall be duly administered to him or her, before any of her Majesty's judges of the Court of Queen's Bench or Court of Common Pleas or Court of Exchequer, or before any master or master extraordinary in chancery; and that the judge or master or master extraordinary in chancery, whether in England or in Ireland, before whom such oath may be administered, shall grant to the memorialist a certificate of his or her having taken and subscribed such oath accordingly; and such certificate shall be signed by the judge, master or master extraordinary in chancery, before whom such oath shall be administered."

Sect. 11. "That the several proceedings hereby authorized to be taken for obtaining such certificate as aforesaid shall be regulated in such manner as the secretary of state shall from time to time direct."

Sect. 12. "That the fees payable in respect of the several proceedings hereby authorized shall be fixed and regulated by the Commissioners of her Majesty's Treasury."

Sect. 13. "That all persons who shall have been naturalized before the passing of this Act, and who shall have resided in the United Kingdom during five successive years, shall be deemed entitled to and shall enjoy all such rights and capacities of British subjects as may be conferred on aliens by the provisions of this Act."

Sect. 14. "Provided always, and be it enacted, that nothing in this Act shall prejudice, or be construed to prejudice, any rights or interests in law or in equity, whether vested or contingent, under any will, deed, or settlement executed by any natural-born subject of Great Britain and Ireland before the passing of this Act, or under any descent or representation from or under any such natural-born subject who shall have died before the passing of this Act."

Sect. 15. "That nothing herein contained shall be construed so as to take away or diminish any right, privilege, or capacity heretofore lawfully possessed by or belonging to aliens residing in Great Britain or Ireland, so far as relates to the possession or enjoyment of any real or personal property, but that all such rights shall continue to be enjoyed by such aliens in as full and ample a manner as such rights were enjoyed before the passing of this Act."

Sect. 16. "That any woman married or who shall be married to a natural-born subject or person naturalized shall be deemed and taken to be herself naturalized, and have all the rights and privileges of a natural-born subject."

This Act is not a declaratory Act. (*De Wall's case*, 12 Jur. 145, P. C.) The 16th section makes the woman a British subject to all intents and purposes, and she, therefore, by her marriage ceases to be an alien, and is not entitled to a trial *de medietate lingue*. (*R. v. Manning*, 1 Den. C. C. 467; 2 C. & K. 887; 19 L. J. M. C. 1.) *Quære?* whether an alien, who is indicted jointly with a British subject for felony, thereby loses the privilege of being tried by a jury *de medietate lingue*. (*Ib.*)

This Act does not extend to the colonies (10 & 11 Vict. c. 83, s. 3); but by the first section of the latter Act it is enacted, that all Acts, statutes and ordinances heretofore made and enacted by the legislature of any of her Majesty's colonies and possessions abroad, for imparting to any person or persons the privileges of naturalization, to be enjoyed within the respective limits of such colonies or possessions respectively, shall, within such limits, have from the time of the enactment thereof all

Proceedings for obtaining certificate.

Amount of fees to be payable.

Naturalized persons resident five years to enjoy rights as aliens.

Act not to affect pre-existing rights.

Act not to take away rights of aliens.

Women married to natural-born subjects deemed naturalized.

Not to extend to colonies.

the same force and effect as belong to any other law, statute or ordinance made or enacted by such respective legislatures; and sect. 2 makes valid all future colonial acts of naturalization, subject to be confirmed or disallowed as other colonial laws. The temporary Act, (11 Vict. c. 20,) giving summary powers to order aliens to depart this realm, has expired.

4. *Offences,
&c. Jurors.*

IV. Offences and Trial and Disqualification of, as Jurors, &c.

Aliens and denizens committing offences here are subject to the same laws and punishments as natural-born subjects; and it is no answer to an indictment, that the act charged against them is not an offence in their own country. (*Reg. v. Esop*, 7 C. & P. 456.) But such a circumstance would be taken into consideration in mitigation of punishment. An alien *residing* here may be indicted for high treason if he aid even his own countrymen in acts of hostility to this country. (1 *Hawk.* c. 2, s. 5.) But aliens who in an hostile manner invade this kingdom, whether their king is at war or peace with it, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but must be dealt with by martial law. (1 *Hawk.* c. 2, s. 6; 3 *Inst.* 11.)

Offences by, in
this country.

In *R. v. Depardo*, (1 *Taunt.* 26; *R. & R. C. C.* 134, *S. C.*), it was held, that a manslaughter committed in *China* by an alien enemy who had been a prisoner of war, and was then acting as a mariner on board an *English* merchant ship, on an *Englishman*, cannot be tried here under an admiralty commission issued in pursuance of the 33 Hen. VIII. c. 23, and 43 Geo. III. c. 11, s. 6. (*Ante*, 44.) The prisoner in that case was tried at the Old Bailey Sessions, October 1807, under a special commission issued by virtue of the statutes 33 Hen. VIII. c. 23, and 43 Geo. III. c. 113, s. 6, upon an indictment which charged that he the said Antonio Depardo on the 30th of November, 47 Geo. III. &c. with force and arms at Canton in China, in parts beyond the sea without England, in and upon one William Burne in the peace, &c. feloniously did make an assault, &c., and with a certain knife, of the value, &c., then and there feloniously did strike, stab and thrust, giving to the said William Burne, then and there, &c. one mortal wound, &c. of which said mortal wound he the said William Burne on the said 30th of November, 47 Geo. III. aforesaid, in Canton in China aforesaid, in part beyond the sea without England, did die; and so the jurors, &c. did say that the said Antonio Depardo him the said William Burne in manner and form aforesaid did kill and slay, against the peace, &c. It appeared in evidence that Antonio Depardo was a Spaniard, and had been a prisoner of war on board the *Blenheim*, and that whilst abroad he volunteered on board a ship called the *Alnwick Castle*, an *Indiaman* then lying at the Prince of Wales's Island, (which is under the dominion of his Majesty,) and received the usual bounty. The prisoner who had served about three months on board the *Indiaman* received on the day before he committed the offence charged in the indictment a part of his pay. The deceased was an *Englishman*, and a mariner serving on board the same ship as the prisoner. At the time of committing the offence the *Alnwick Castle* was lying near Canton, in a part of the Canton river, about one-third of a mile in width, within the tideway, at the distance of about eighty miles from the sea. The prisoner went on shore with others of the crew, and there mortally wounded the deceased, who was afterwards carried on board the ship, where he died the following day. The prisoner was found guilty, but the learned judge, entertaining some doubts whether the prisoner was liable to be tried here under the statutes 33 Hen. VIII. c. 23, and 43

Offence abroad.

4. Offences, &c. Jurors.

24 & 25 Vict.
c. 100, s. 10, is
not applicable to
a foreigner where
the death is
occasioned by a
blow given out
of Britain.

Geo. III. c. 113, s. 6, reserved the case for the opinion of the judges. In Michaelmas term, 1807, this case was argued before the judges by *Burrough* for the prisoner, and *Abbott* for the crown. No judgment was given, but the prisoner was discharged.

Statutes relating to offences committed out of British territory apply only to British subjects, but not to the subjects of a foreign state, and, therefore, a conviction under 9 Geo. IV. c. 31, now repealed but re-enacted by 24 & 25 Vict. c. 100, s. 10, for manslaughter, was quashed where the prisoner was a Frenchman by birth and a naturalized citizen of the United States of America, and not a subject of the Queen. The deceased was a German by birth and not a subject of the Queen, and the death was occasioned by a blow given on the high seas on board a ship which was American, owned, commanded by an American master, and sailed under the flag of the United States; (*Reg. v. Lewis*, 1 D. & B. 182; 26 L. J. M. C. 104;) but an English ship on the high seas is considered English territory, and, therefore, a foreigner who feloniously wounded another foreigner in an English ship whilst on the high seas was deemed to have committed an offence against the English law. (*Reg. v. Lopez*, 1 D. & B. 525; 27 L. J. M. C. 48.) So where a foreigner, having committed a larceny at St. Ives, in this country, made his escape and went to Hamburgh, and a detective officer followed and arrested him and put him on board an English steamer, and on the voyage to England, whilst on the high seas, the foreigner shot the officer, the foreigner was deemed rightly convicted of murder; (*Reg. v. Sattler*, 1 D. & B. 539; 27 L. J. M. C. 48;) and in *R. v. Lesley*, (1 Bell C. C. 220; 29 L. J. M. C. 97,) it was said, in the judgment, that "it is clear that an English ship on the high sea, out of any foreign territory, is subject to the laws of England, and persons, whether foreign or English, on board such ship, are as much amenable to English law as they would be on English soil." In *Regina v. Sattler*, this principle was acted on so as to make the prisoner, a foreigner, responsible for murder on board an English ship at sea. The same principle has been laid down by foreign writers on international law, among which it is enough to cite *Ortolan Jur. la Diplomatie de la Mer*. No. 2, cap. 13. The facts in *R. v. Lesley*, (*ubi sup.*) were, that the prosecutor and others being in Chili, and subjects of that state, were banished from Chili to England. The defendant being master of an English ship, lying in the territorial waters of Chili, contracted with the government to take the prosecutor and his companions from Valparaiso to Liverpool, and brought them under the contract, and it was held that, though on Chilian waters, what he did, being by the order of the Chilian Government, was lawful, but that as to what was done out of Chilian waters he was rightly convicted of false imprisonment. A British subject who commits murder in a foreign country, upon a person not a British subject, is triable in England, under 9 Geo. IV. c. 31, s. 7. (*R. v. Azzopardi*, 1 C. & K. 203.) That Act is now repealed but re-enacted by 24 & 25 Vict. c. 100, s. 9.

But a person who steals goods in France cannot be tried in England for the offence, though he be found in possession of the stolen property here. (*Rex v. Madge*, 9 Car. & P. 29.)

The statutes relating to bastardy do not contemplate the case of a child born bastard in a foreign country. (*Reg. v. Blane*, 13 Q. B. 769; 18 L. J. M. C. 216.) In that case the orders of a magistrate and of sessions made upon the putative father of a bastard child born of a single woman, a native of France, who had served as an apprentice in this country eighteen years and went to France for the purpose of her confinement, was delivered there of a child and returned to this country, were quashed. (*Ib.*)

Aliens and denizens, besides the ordinary species of jury, are entitled, except in treason, to demand another description of jury, which by the humanity of the law is given them, viz., a *jury de medietate lingue*. (*Reg.*

v. *Manning*, 1 Den. C. C. 467; 19 L. J. M. C. 1.) In this respect the 6 Geo. IV. c. 50, s. 47, enacts that "in all inquests that are taken against aliens, half the jury shall be aliens, if so many are to be found within the town or place where the trial is had, and if not, so many as the sheriff is able to procure, and the alien juror need not produce any freehold or other qualification required by the Act in other cases." If an alien neglect to claim this advantage before the jury are sworn, he can take no exception in any subsequent stage of the proceedings. (*The Abbot of Westminster v. The Executors of Clerke*, 1 Dyer, 28, a; *Rex v. D'Eon*, 1 Bla. Rep. 517. See further 1 Chit. C. L. 525; post, tit. "*Jurors*," Vol. III.)

Alkali Works.

The 6 Geo. IV. c. 50, s. 3, provides, "That no man not being a natural-born subject of the king is or shall be qualified to serve on juries or inquests, except only in the cases thereafter expressly provided for," viz. of *juries de medietate lingue*. (See *supra*.)

Disqualification of, as jurors.

An alien may be a witness. (2 Hawk. c. 46, s. 28; post, "*Evidence*," Vol. II.)

Witness.

The 14 & 15 Hen. VIII. c. 2, prohibits an alien from taking an apprenticeship. (See post, "*Master and Servant*," "*Poor*.")

Apprentice.

As to extradition of foreigners, see 6 & 7 Vict. cc. 75, 76, and 8 & 9 Vict. c. 120.

Extradition.

Alkali Works.

[26 & 27 Vict. c. 124.]

- I. *Interpretation of Terms*, 158.
- II. *Conduct of Alkali Works—Registration*, 158.
- III. *Inspectors*, 159.
- IV. *Special Rules*, 160.
- V. *Penalties for Offences other than against Special Rule, Recovery of*, 160.
- VI. *Penalties for Offences against Special Rule, Recovery of*, 161.

BY the Alkali Act, 1863 (26 & 27 Vict. c. 124), an Act for the more effectual condensation of muriatic gas in alkali works, which is to continue in force till July 1868, every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the inspector, derived from his own examination, or from that of a sub-inspector, of not less than 95 per cent. of the muriatic acid gas evolved therein: Provided always, that nothing therein contained should entitle the inspector to direct any alteration to be made in the process of manufacture, or the apparatus used therein (s. 4). Any owner of an alkali work carried on in contravention of the above section is subject to a penalty not exceeding fifty pounds upon conviction of a first offence, and not exceeding one hundred pounds for every offence after the previous conviction, but so that more than one offence cannot be committed on the same day, such penalties to be recoverable by plaint in the county court. The owner may make special rules for the workmen, and penalties for infringement of them are recoverable under 11 & 12 Vict. c. 43.

1. *Inter-pretation of Terms.*

Interpretation of terms.

I. Interpretation of Terms.

Sect. 3. "The term 'alkali work,' as hereinafter used, shall mean every work for the manufacture of alkali, sulphate of soda, or sulphate of potash in which muriatic acid gas is evolved :

"The term 'owner,' as hereinafter used, shall mean the lessee or occupier or any other person carrying on any alkali work :

"The term 'the inspector,' shall mean the inspector to be appointed under this Act."

II. Conduct of Alkali Works: Registration.

As to the conduct of alkali works.

Sect. 4. "Every alkali work shall be carried on in such manner as to secure the condensation to the satisfaction of the inspector, derived from his own examination or from that of a sub-inspector, of not less than ninety-five per centum of the muriatic acid gas evolved therein: Provided always, that nothing herein contained shall entitle the inspector to direct any alteration to be made in the process of manufacture or the apparatus used therein.

"If any alkali work is carried on in contravention of this section, the owner of that work shall, on its being made to appear to the court before which any proceedings for recovery of a penalty may be instituted, that ninety-five per centum at least of the muriatic acid gas evolved in such work has not been condensed, be deemed to be guilty of an offence against this Act, and be subject in respect of the first conviction to a penalty not exceeding fifty pounds, and in respect of every offence after a previous conviction to a penalty not exceeding one hundred pounds: Provided always, that no such owner shall be convicted of more than one such offence in respect of any one day: Provided also, that no such penalty shall be inflicted unless the inspector shall produce before the Court having cognizance of the matter a statement in writing of the facts on which he founds his opinion that ninety-five per centum of the muriatic acid gas evolved in the alkali work is not condensed therein, and serve a copy thereof with the process commencing the proceedings."

Owner to be liable for offences in the first instance, unless he prove that the offence was committed by some agent, &c., without his knowledge, in which case such agent, &c., to be liable.

Sect. 5. "The owner of any alkali work in which any offence against this Act has been proved to have been committed, and for which a pecuniary penalty may be imposed, shall in every case be deemed to have committed the offence, and shall be liable to pay the penalty, unless he shall prove to the satisfaction of the court before which any action shall be brought for the recovery of such penalty that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent, servant, or workman, whom he shall charge by name as the actual offender, without his knowledge, consent, or connivance, in which case such agent, servant, or workman shall be liable to and may be sued for the payment of the penalty, and of the costs of all proceedings which may be taken for the recovery thereof, either against himself or against the owner under this Act; provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he shall believe to be the actual offender, without first proceeding against the owner, in any case in which it shall be made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge, consent, or connivance of the owner, and in contravention of his orders."

As to the registration of alkali works.

Sect. 6. "No alkali work shall at any time after the expiration of three months after the appointment of the inspector be carried on or prosecuted until such work has been registered by the owner with the

inspector. In every register hereby required to be made there shall be inserted the name in full of the owner, and of the parish or township in which the work is situate, and within one month after change of ownership in any such work the register of such work shall be amended by inserting the name of the new owner; and if any alkali work is carried on in contravention of this section, the owner thereof shall, on conviction, be deemed to be guilty of an offence against this Act, and shall be subject to a penalty not exceeding five pounds for every day during which such work shall have been so carried on.

3. *Inspectors.*

III. *Inspectors.*

Sect. 7. "For the purpose of carrying into effect the provisions of this Act, the Board of Trade may from time to time appoint any fit and proper person to be inspector of alkali works under this Act, and may from time to time remove any inspector so appointed, and appoint another person in his place. The Board of Trade may also, on application of the inspector, from time to time appoint and remove such sub-inspector or sub-inspectors as the said board may deem necessary for the purpose of carrying this Act into effect. Notice of the appointment of such inspector and sub-inspectors shall be published in the *London Gazette*, and a copy of the Gazette shall be evidence of the appointment made."

Appointment of inspectors.

Sect. 8. "No person either directly or indirectly acting or practising as a land agent, or directly or indirectly engaged in any manufacture, or interested in any patent in or according to which the decomposition of salt or the condensation of muriatic acid gas may be effected, shall act as an inspector or sub-inspector under this Act."

What persons disqualified from acting as inspector.

Sect. 9. "It shall be the duty of every inspector under this Act to ascertain from time to time that all the alkali works are carried on in conformity with the provisions of this Act, and to enforce the said provisions, and to cause notice to be given to every owner whose work shall be carried on in contravention of this Act of the commission thereof; and with a view to the performance of that duty he or any sub-inspector may at all reasonable times, by day and by night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter upon and inspect any alkali work, and examine into the efficiency of the condensing apparatus, and the quantity of muriatic acid gas condensed, and generally into all matters and works tending to show compliance or non-compliance with the provisions of this Act. And the owner of such works, upon demand of the inspector, shall within a reasonable time furnish him with a plan, to be kept secret by such inspector, of those parts of such works in which the decomposition of salt or other process causing the evolution of muriatic acid gas or the condensation thereof is carried on.

Duties and powers of inspector.

"It shall be lawful for the inspector or any sub-inspector under his direction, but so as not to interfere with the process of the manufacture, to apply any tests or make any experiments he may think proper for the purpose of ascertaining the efficiency of the condensing apparatus, or the quantity of gas condensed; and the owner or agent of the works shall be deemed to be guilty of an offence against this Act unless he renders to the said inspector or sub-inspector all necessary facilities for their entry, examination, and testing."

Sect. 10. "Every inspector and sub-inspector appointed under this Act shall be paid such salary as may be determined by the Board of Trade, with the consent of the commissioners of her Majesty's treasury."

Salaries of inspectors and sub-inspectors.

Sect. 11. "Every person who wilfully obstructs any inspector or sub-inspector in the execution of this Act, and every owner of any alkali

General penalties on violation of Act.

3. *Inspectors.* work who refuses or neglects to afford to the inspector or sub-inspector the facilities necessary for making any entry, inspection, examination, or testing under this Act, or who neglects or wilfully violates any provision of this Act, for the neglect or violation of which no other penalty is by this Act imposed, shall be guilty of an offence within the meaning of this Act, and shall for every such offence incur a penalty not exceeding ten pounds."

Inspector to report to parliament.

Sect. 12. "The inspector shall, on or before the first day of March in every year, make a report in writing to the Board of Trade of his proceedings during the preceding year, and a copy of such report shall be laid before both Houses of Parliament."

IV. *Special Rules.*

Power to owners of works to make special rules.

Sect. 13. "The owner of any alkali work may, with the sanction of the Board of Trade, make, alter, or repeal special rules for the guidance of such of his workmen as are employed in any process causing the evolution of muriatic acid gas, or whose duty it is to attend to the apparatus used in the condensation of that gas, and may annex penalties to any violation of such rules, so that no penalty exceeds two pounds for any one offence.

"A printed copy of the special rules in force in any alkali work shall be given by the owner of the work to every person working or employed in or about that work affected thereby."

V. *Penalties.*

As to recovery of penalties in England for other than offences against a special rule.

Sect. 14. "The following regulations shall be enacted with respect to the recovery in England of penalties for offences other than offences against a special rule :

"Every such penalty shall be recovered by action in the county court having jurisdiction in the district in which the alkali works are situate in respect of which the penalty arises :

"The action shall be brought, with the sanction of the Board of Trade, by the inspector appointed under this Act, within three months after the commission of the offence, and for the purposes of such action the penalty shall be deemed to be a debt due to such inspector :

"The plaintiff in any action for a penalty under this Act shall be presumed to be the inspector appointed under this Act, until the contrary is proved by the defendant :

"The court may, upon the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such compensation as the court thinks just :

"The amount of compensation awarded by the judge shall be deemed to be costs in the cause :

"If either party in any action for a penalty under this Act feels aggrieved by the decision of the court in point of law, or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to any of the superior courts of common law at Westminster :

"The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys :

"The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses :

"Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to an action for a penalty under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court :

"Within the City of London and the liberties thereof the sheriffs court, established by a local Act passed in the eleventh year of the reign of her present Majesty, chapter seventy-one, intituled 'An Act for the more easy recovery of small debts and demands within the City of London and the liberties thereof,' shall be deemed to be the county court having jurisdiction in the case."

Sect. 15. "In Scotland any offence under this Act, with the exception of offences against a special rule, shall be prosecuted at the instance of the inspector, with the sanction of the Board of Trade, before the sheriff or sheriff-substitute of the county in which the offence has been committed, and the sheriff or sheriff-substitute having cognizance of such offence may award costs to either party, and may sentence the offender to imprisonment for any period not exceeding six months, unless the penalty and costs be previously paid ; and any decision or sentence of such sheriff or sheriff-substitute shall be subject to review and appeal according to law."

6. Penalties.

As to recovery of general penalties in Scotland.

Sect. 16. "In Ireland all penalties incurred under this Act, with the exception of penalties against a special rule, may be recovered by civil bill at the instance of the inspector, with the sanction of the Board of Trade, in the manner and with the appeal directed by an Act passed in the fourteenth and fifteenth years of her Majesty, chapter fifty-seven, or any Act or Acts amending the law relating to civil bills."

As to recovery of general penalties in Ireland.

Sect. 17. "All penalties recovered under this Act, except in respect of offences against a special rule, shall be paid into the receipt of her Majesty's exchequer in such manner as the commissioners of the treasury may determine."

Application of penalties.

VI. Penalties for Offences against Special Rules.

Sect. 18. "All penalties incurred under this Act in respect of any offence against a special rule may be recovered summarily in England and Ireland before two or more justices ; as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled 'An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,' or any Act amending the same ; as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled 'An Act to consolidate and amend the Acts regulating the proceedings of petty sessions, and the duties of justices of the peace out of quarter sessions, in Ireland,' or any Act amending the same ; and in Scotland, before the sheriff or two justices in manner directed by 'The Railways Clauses Consolidation, Scotland, Act, 1845,' with respect to penalties imposed by that Act, the recovery of which is not otherwise provided for."

As to recovery of penalties for offences against special rule.

Sect. 19. "This Act shall continue in force to the first day of July one thousand eight hundred and sixty-eight, and no longer."

Term of Act.

Ambassadors.**Ambassadors.**

What.

AN Ambassador is a person sent by one sovereign to another with authority, and letters of credence, to treat on affairs of state. (4 *Inst.* 153.)

Protection of.

Ambassadors may, by a precaution, be warned not to come to the place where sent, and if they then do it they shall be taken for enemies; but being once admitted even with enemies in arms they shall have the protection of the laws of nations and be preserved as princes. (*Molloy Bk. 1, c. 10, s. 6, p. 203.*) If a banished man be sent as an *ambassador* to the place from whence he is banished he may not be detained or molested there. (4 *Inst.* 153.)

But if he be not received or admitted as ambassador he has no privilege as such, and an ambassador may be refused in respect of him by whom sent, or in respect of the person sent, as if he is notoriously flagitious, or if he be disagreeable to the state to which he is sent. An ambassador ought not, however, to be refused without cause. (See *Grotius and Molloy*, cited *Com. Dig.* tit. "*Ambassador*.")

Offences by.

If a foreign *ambassador* commits any crime here, which is *contra jus gentium*, as treason, felony, &c., or any other crime against the law of nations, he loseth the privilege of an *ambassador*, and is subject to punishment as a private alien; and he need not be remanded to his sovereign but of courtesy. (4 *Inst.* 153, *Com. Dig.* tit. "*Ambassador*.") But if a thing be only *malum prohibitum* by an Act of Parliament, private law, or custom of the realm, and it is not *contra jus gentium*, an *ambassador* shall not be bound by them; (4 *Inst.* 153;) and it is said *ambassadors* may be excused of practices against the state where they reside (except it be in point of conspiracy, which is against the law of nations,) because it doth not appear whether they have it *in mandatis*, and then they are excused by necessity of obedience. (*Bac. Max.* 26 *Toml. Dict.* "*Ambassador*," by *Granger*; 2 *Steph. Com.* 497, 4th ed.)

Killing of.

The killing an *ambassador* has been adjudged high treason. (3 *Inst.* 8.)

Privilege of.

Some *ambassadors* are allowed by concession to have jurisdiction over their own families, and their houses permitted to be sanctuaries; but where persons who have greatly offended fly to their houses, after demand and refusal to deliver them up, they may be taken from thence. (4 *Inst.* 162.)

See the exception in the Alien Act as to ambassadors, &c. *ante*.

As to the other privileges of ambassadors from arrest in civil suit, see 2 *Steph. Com.* 500, 4th ed.; *Tidd*, 9th edit. 191, 535; 1 *Chit. Stat.* tit. "*Ambassadors*."

Ambassadors are protected from arrest in process in civil suits by 7 Anne, c. 12.

The authorities relative to the privileges of ambassadors of foreign nations residing in this country, by which they are protected from the process of the courts, so as to secure their persons and goods from molestation, are collected in *Taylor v. Best*, 14 C. B. 487; 23 L. J. C. P. 89; and *Magdalena Steam Navigation Company v. Martin*, 2 E. & E. 94; 28 L. J. Q. B. 310.

Amendment.

I. *At Common Law*, 163.II. *By Statute*, 164.

I. *At Common Law.*

OF Proceedings in General.—Whatever at common law may be amended in *civil* cases, may be also amended in *criminal* cases. (*Reg. v. Tutchin*, 1 *Salk.* 51.) In general.

With respect to *judicial* acts or papers there can be no doubt that they are amendable for any mistake therein, at any time before they become matters of *record*, and that of common right and not by virtue of any statute. (*Anon.* 1 *Salk.* 47; *Bondfield v. Milner*, 2 *Burr.* 1099.) Thus the Court may alter their own judgment any time in the *same term* in which it is passed, and either pass another or remedy a defect in the former. (*R. v. Price*, 6 *East*, 328; *R. v. Justices of Leicestershire*, 1 *M. & Sel.* 442; *R. v. Hoskins*, 2 *Lord Raym.* 968.) Judicial acts.

And the justices at sessions may amend their judgment during the same sessions, because in consideration of law their sitting is but one day; but not at any subsequent period, unless they professedly adjourn, which they may do. (*South Cadbury v. Bradden*, 2 *Salk.* 606; *Bac. Abr. Court of Sessions.*) At sessions.

But no amendment can be made by any authority when once the term or session is over, and the judgment solemnly entered on the record. Even when judgment on appeal has been pronounced erroneously by a mistake of the chairman, the justices cannot rectify it afterwards, even with the assent of the whole number who were present, nor can the Court of Queen's Bench assist them. A clear illustration of this principle arose out of the decision of an appeal against an order of removal at the Berks Easter Sessions, 1828. The majority of the justices voted for confirming the order, in which opinion the chairman concurred; but in pronouncing the judgment of the court he, by mistake, delivered it thus, "The order is quashed," which was entered accordingly by the clerk of the peace. This mistake, which was in the mere pronouncing of the judgment, was not discovered till a subsequent part of the same day, when the sessions had regularly closed. Mr. *Shepherd* afterwards moved the Court of Queen's Bench on the affidavit of the justices themselves, for a *mandamus* to re-hear the appeal, or to correct the judgment by the chairman's notes; but the Court of Queen's Bench held that they had no power to interfere, and the judgment remained as entered. (*Talfourd's Dickinson's Sessions*, 434, and note; *R. v. Walcot*, 4 *Mod.* 395; see also *R. v. Justices of Leicestershire*, *ubi sup.*)

In a late case, however, the Court of Queen's Bench granted a *mandamus* to justices to amend the record of a game conviction, by setting out the evidence on which it was founded as near as possible in the words used by the witness. (*R. v. Warnford*, 2 *D. & R. Mag. Ca.* 511; and see *R. v. Allen*, cited *id.*)

Mere *ministerial* acts may at any time be amended; (*Faulkner's case*, 1 *Saund.* 249, 50, c. n. 1; *Philips v. Smith*, 1 *Str.* 136;) and any matter not of record may be amended by the record, if a mistake has arisen in the former. (*R. v. Hayes*, 2 *Ld. Raym.* 1519; *R. v. Ellames*, *Rep. temp. Hardw.* 43; 1 *Barnard*, 31.) Ministerial acts.

2. *By Statute.*II. *By Statute.*

1. *By Superior Court*, 164.
2. *By Sessions*, 169.
3. *By Justices out of Sessions*, 172.

1. BY SUPERIOR COURT.

Of indictment.

Indictments stand upon the same principles with respect to amendment, as those to which all pleadings are subject at common law. (*Wilkes' case*, 4 Burr. 2569; 6 Mod. 268; 2 Hawk. c. 25, s. 97.) But as the indictment is the finding of the jury upon oath, it cannot be amended except under the special provision of some statute without the concurrence of the grand inquest by whom it is presented, and this before they are discharged.

As to variances where matter to amend by was in writing.

The 11 & 12 Vict. c. 46, s. 4, enacted that any court of oyer and terminer, or general gaol delivery, if such court should see fit so to do might cause the indictment or information for any offence whatever, when any variance or variances should appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial was pending, to be forthwith amended in such particular or particulars by some officer of the court.

The Court of Quarter Sessions not being according to technical acceptation a court of oyer and terminer, (1 Hale, 165,) the powers of amendment conferred by this statute was extended to that court by the 12 & 13 Vict. c. 45, s. 10, see *post*, 171.

Amendment of name of place ;

or of owner of property the subject of the offence charged ;

or of person injured ;

or in name or description of person ;
or thing named therein ;

or in ownership.

Where variance not material and no prejudice to defendant.

And now by the 14 & 15 Vict. c. 100, s. 1, "Whenever on the trial of any indictment for any felony or misdemeanour there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate therein stated or alleged, to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate therein stated, or alleged to be injured or damaged, or intended to be injured or damaged, by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, of any person or persons whatsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend on such terms as to postponing the trial to be had before the same or another jury as such court shall think reasonable, and after any such amendment the trial shall proceed whenever the same shall be proceeded with in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred, and in case such trial shall be had at *nisi prius*, the order for the amendment shall be indorsed on the *postea* and returned together with the record; and thereupon such papers, rolls,

and other records of the court from which such record issued, as it may be necessary to amend, shall be amended accordingly by the proper officer, and in all other cases the order for the amendment shall either be indorsed on the indictment or shall be engrossed on parchment, and filed together with the indictment among the records of the court; provided that in all such cases where the trial shall be so postponed, it shall be lawful for such court to respite the recognizances of the prosecutor and witnesses, and of the defendant and his surety or sureties, if any, accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute and give evidence, at the time and place to which such trial shall have been so postponed.

"Provided also that where any such trial shall be to be had before another jury, the Crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn."

Sect. 3 provides that, "If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made, under the provisions of this Act, such record shall be drawn up in the form in which the indictment was, after such amendment was made, without taking any notice of the fact of such amendment having been made."

Form of formal
record after
amendment.

An indictment charging the defendant with having obstructed a footway may be amended when one of the termini of the way has been misdescribed, provided the variance be not calculated to prejudice the defendant. (*R. v. Sturge*, 3 *E. & B.* 734; 23 *L. J. M. C.* 172.) An amendment may be made when the ownership of stolen property is wrongly described. (*R. v. Vincent*, 2 *Den. C. C.* 464; 21 *L. J. M. C.* 109; *R. v. Fullarton*, 6 *Cox C. C.* 194; *R. v. Pritchard*, 1 *L. & C.* 34; 30 *L. J. M. C.* 169; *R. v. Webster*, 1 *L. & C.* 77; 31 *L. J. M. C.* 17.) Where an indictment for perjury alleged that the offence was committed on the trial of a prisoner for burning a barn, and the certificate of conviction related to a charge of setting fire to a stack, the indictment was rightly amended accordingly. (*R. v. Neville*, 6 *Cox C. C.* 69, per *Williams, J.*)

It is not too late to apply for an amendment, though the counsel for the prisoner may have addressed the jury. (*R. v. Fullarton*, 6 *Cox C. C.* 194, per *Lefroy, C. J.*, and *Monahan, C. J.*) This case overrules *R. v. Rymes*, 3 *C. & Kir.* 326. An amendment cannot be made after verdict. (*R. v. Larkin*, 1 *Dears. & P.* 365; 23 *L. J. M. C.* 125; 6 *Cox C. C.* 377; *R. v. Frost*, 1 *Dears. & P.* 474; 24 *L. J. M. C.* 116.) The misrecital of the title of an Act of Parliament in an indictment, if the variation is so insignificant that the judges can have no doubt what Act is referred to, is no ground of objection. (*Reg. v. Westley*, *Bell C. C.* 193; 29 *L. J. M. C.* 35.) It would seem that the larger words in the 14 & 15 Vict. c. 100, s. 1, by which a variance in the name or description of any matter or thing whatsoever in the indictment named or described have been held to include and extend beyond the provisions of the 11 & 12 Vict. c. 46. (*Reg. v. Neville, ubi sup.*) The later statute, too, will cure deficiencies that existed in the older ones. Thus it will apply to other cases than those where the written instrument was *professed* to be set out, to which cases only the former statute of 9 Geo. IV. c. 15, had been held applicable, (*Ryder v. Malbon*, 3 *C. & P.* 594; *Webb v. Hill*, 3 *C. & P.* 485,) and omissions even which affect the substance of the instrument may be supplied, subject to the amendment not prejudicing the prisoner. It was allowable, under the 9 Geo. IV. c. 15, to amend where a judgment is stated to be of one court but was in fact of another. (*Briant v. Eicke*, 1 *M. & M.* 359.)

2. By Statute:

2. By Statute. Formerly it was considered that the powers of amendment conferred by the earlier statutes should be sparingly exercised, and judges would not amend if they thought the variance arose from want of care in the collation of the proof and the indictment, (*Self v. Oriel*, 4 C. & P. 22, 24; *R. v. Cooke*, 7 C. & P. 559; *Reg. v. Hewins*, 9 C. & P. 789.) but now the interests of justice are considered to prevail over accuracy of pleading so long as the prisoner may suffer no detriment,

Indictment. The court will not amend, under the 14 & 15 Vict. c. 100, s. 1, an indictment by striking out the word feloniously, and thereby convert the charge into a misdemeanour, where the document given in evidence to sustain a charge of forgery, (made felony under the 11 Geo. IV. c. 66, ss. 3, 10,) will not sustain a charge of felony, although evidence of a common law misdemeanour. (*R. v. Wright*, 2 F. & F. 320.) The exercise of the power of amendment under the 14 & 15 Vict. c. 100, is discretionary with the court, and must be exercised before verdict. (*R. v. Frost*, 1 Dears. & P. 474; 24 L. J. M. C. 116; *Reg. v. Pritchard*, L. & C. 34; 30 L. J. M. C. 169.) The Christian names of a person is a matter of description, and must be proved as laid, unless amended, but the amendment can only be according to the proof. (*Ibid.*)

Names.

Venue.

The Court of Queen's Bench amended by consent an indictment for a conspiracy, removed by *certiorari* from the Central Criminal Court, by striking out the venue in the margin, viz., Central Criminal Court, and inserting the proper venue. (*The Queen v. Lord Ashburton*, 5 Q. B. 48; 13 L. J. M. C. 40.)

Mistakes in captions, &c., of indictments.

A mistake in the caption of an indictment may be amended at any time, it being a mere ministerial act, (1 Ch. C. L. 335,) if there is anything safe to amend by. But where no minutes had been taken, the Court of Queen's Bench refused to order a town clerk to insert in the caption of an indictment removed into that court, the names of all the grand jurors, (*R. v. Marsh*, W. W. & D. 150; 1 Jur. 38,) but the entry roll and record of nisi prius have been altered to make them agree with the amended caption after the term in which the *certiorari* was returned, and even after a general verdict of guilty. (*R. v. Darley*, 4 East, 174.)

Inquisition.

When formal objections must be taken.

As to the amendment of coroner's inquisition, see "*Coroner*," *post*.

By sect. 25 of the 14 & 15 Vict. c. 100, "Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion, to quash such indictment before the jury shall be sworn and not afterwards, and any court before which such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared."

Criminal information.

The same powers of amendment are conferred with respect to informations by the 14 & 15 Vict. c. 100, as with respect to indictments, see sect. 30 of that Act. Before that statute criminal informations which are not found upon the oath of a jury might be amended by the court, and even by a single judge at chambers, at any time before trial, (*R. v. Wilkes*, 4 Burr. 2527; *R. v. Harris*, 1 Salk. 47; *R. v. Lewis*, 12 Mod. 229; *R. v. Charlesworth*, 2 Stra. 871; *R. v. Holland*, 4 T. R. 457; *Arch. Cr. Pl.* 102, 16th ed.) and a mere clerical error in the caption and not the body of the information may be rectified even after verdict. (*R. v. Hockenhall*, 3 Mod. 169.)

Information in rem.

On an information in the Exchequer at the suit of the Attorney-General, for breach of a covenant to repair some Crown premises, the Attorney-General was held entitled to a rule absolute in the first instance to amend the information. (*Attorney-General v. Ray*, 11 M. & W. 464.) And an information *in rem* may be amended by the Crown after plea pleaded by adding additional counts, although a recognizance had been entered into by the bail to pay the costs occasioned by the claim, such recognizance having been entered into before

the information was filed. (*Attorney-General v. Smith*, 5 M. & W. 372; *Attorney-General v. Henderson*, 3 Anst. 714.) 2. By Statute.

The amendment of an information may be extensive and material. (*R. v. Pewterus*, Cas. temp. Hardw. 203; *R. v. Green*, id. 209.)

As to the amendments of informations on pleas of abatement, see "*Abatement*," ante, p. 2.

On variances in written instruments and other variances, see ante, p. 164.

Where the amendment is made before a judge at his chambers the prosecutor should apply for a summons to show cause why the alteration should not be effected. (4 Burr. 2528.) On this the judge will issue a summons in the cause directed to the defendant's clerk in court, agent, attorney, or solicitor, requiring him to attend him at his house or chambers, and show cause why the specific amendment should not be made, (*id.*), but though he is thus desired to attend, his consent is not necessary, and the judge will proceed to make an order to amend the injunction as required. (*Id.*)

Pleas are amendable at common law before they are filed upon the record, (*R. v. Knowles*, 1 Salk. 47; *Com. Dig. Amendment*, 2 C. 1.) but when once they are entered upon the roll they can only be altered by virtue of some legislative enactment. (*R. v. Knowles*, *ubi sup.*; *Bondfield v. Milner*, 2 Burr. 1099.) Now all the provisions relating to amendment on account of variances under the 14 & 15 Vict. c. 100, applicable to an indictment, apply also to pleas; (see sect. 30;) but the 11 & 12 Vict. c. 46, only applies to indictments or informations. Of pleas.

Evident misprisions in mere matters of form, either in joining of issue or setting out the process are amendable at common law. (1 Stark. C. L. 245.) Of issues, continuances, &c.

The amendment of a continuance is by common law. See 6 Edw. III. 25 pl. 54, where a discontinuance of the respite of the jury was amended by the Court after the inquest taken, and that was before any statute for amendments was passed; for erroneous entries of continuances were such mistakes of an officer of the court as may be amended according to the truth.

In *Reg. v. Gregory*, (4 D. & L. 77,) it was thought that the earlier statutes of amendment which did not expressly except indictments were applicable to criminal proceedings. In this case the defendant, in January 1843, pleaded not guilty to an indictment for a misdemeanour removed at his instance into the Court of Queen's Bench by *certiorari*, and in Michaelmas Term, 1843, entered a retraxit of his plea, and judgment for the Crown was accordingly entered up against him as of that term. His clerk in court, according to the then usual practice, made up the plea roll, and in entering continuances from term to term he entered a *venire facias juratores* as issuing in Hilary Term, 1843, returnable on the 16th of April, which was a Sunday, and omitted the terms and years in the continuances of the jury process. The prosecutor entered up the judgment and all subsequent proceedings, and in so doing omitted any continuances at all from Easter Term, 1844, to Trinity Term, 1845. In Trinity Term, 1845, the defendant was sentenced to six months' imprisonment. He then brought error on the judgment, but a rule was made absolute to issue a *venire facias* then as of Hilary Term, 1843, returnable in Easter Term, 1843, not on a Sunday, and correcting the roll accordingly, and for inserting the years after the months and the omitted continuances on the roll. (*Reg. v. Gregory*, 4 D. & L. 77; 16 L. J. Q. B. 281; see 15 Q. B. 957.) It was also there said, that it was clear that mistaken statements of acts of the court made by its officers on records may be amended according to the truth by the common law. (8 Rep. 156, *Blackmore's case*.)

A verdict may be corrected from the notes of the judge or clerk of assize, or minutes signed by the jury. (*Gibson's case*, cited 1 Doug. 377; Of verdicts.)

2. By Statute. *R. v. Hazel*, 1 *Leach*, 406 ; *R. v. Hayes*, 2 *Stra.* 843.) And it has been decided that though a verdict of not guilty be recorded, yet if it appear promptly that it is not according to the intention of the jury, it may be vacated and set right. (*R. v. Parkin*, 1 *R. & M.* 45.) If a jury bring in a verdict which is not a lawful verdict, they may be sent back to re-consider it. (*Reg. v. Yeadon*, *L. & C.* 81 ; 31 *L. J. M. C.* 70.) But if the jury bring in a verdict which is a lawful verdict, which, under a mistake of law, the judge refuses to receive, and desires them to re-consider, whereupon, and in consequence of what the judge has told them, they find another verdict, this amounts to a mistrial, and a *venire de novo* would be awarded. (*Reg. v. Yeadon*, *ubi sup.*) But if there be no notes of the judge, &c., or other document to amend by, the recollection of the judge will not be sufficient, and the amendment cannot be allowed. (*Reg. v. Virrier*, 12 *A. & E.* 317.)

Judgments. The sentence may be amended or altered at any time during the continuance of the same assizes at which it was passed, (*R. v. Fletcher*, *Russ. & R.* 58,) and before judgment in the Exchequer Chamber. The court below on motion permitted the prosecutor of an indictment for libel removed into the Queen's Bench, to amend the record of the sentence by the rule of sentence as entered in the master's book. (*Gregory v. The Queen*, 15 *Q. B.* 957.) Upon an indictment in the Queen's Bench for a misdemeanour, after verdict, judgment, and sentence passed by the judge at the assizes, by virtue of the 11 Geo. IV. and 1 Will. IV. c. 70, s. 9, the court afterwards upon motion "amended" by virtue of the same section the judgment by setting it aside. (*Reg. v. Nott*, *D. & M.* 1 ; 12 *L. J. M. C.* 143.)

Certiorari. *Of return to Certiorari.*—Where a statute allows of it, an order or conviction returned to a writ of *certiorari* may be amended under the 12 & 13 Vict. c. 45, s. 7, for which see *post*, p. 169. The court on a return to a writ of *certiorari* amended an order of removal by inserting the words "in and" before the word "for" in the description of the justices making the order, who were described as justices for a borough. And the court said that the only condition to the power of amendment under that statute was that it should be shown to their satisfaction that sufficient grounds were in proof before the justices to have authorized the drawing up of the order free from the omission (*R. v. Hellingley*, 1 *E. & E.* 749 ; 28 *L. J. M. C.* 167.)

Habeas corpus. *Of return to Habeas Corpus.*—The court may in its discretion allow the return to a writ of *habeas corpus*, to be amended after it has been returned. (*R. v. Batchelor*, *re Canadian Prisoners*, 1 *Per. & D.* 516 ; and see *Re Clarke*, 6 *Jurist*, 757.) As to the substitution of a good warrant of commitment for a defective one, see *post*, p. 172.

Crown case reserved. *On a crown case reserved.*—By the 11 & 12 Vict. c. 78, s. 2, where a case has been reserved for the Court of Crown Cases Reserved, it has power to affirm, reverse, or amend any judgment which shall have been given on the indictment or inquisition at the trial. In *Reg. v. Yeadon*, (*L. & C.* 81 ; 31 *L. J. M. C.* 70,) the court awarded a *venire de novo*.

And by sect. 4, the court may cause the case or certificate issued under that Act, to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended. Cases were amended in *Reg. v. Hey*, 1 *Den. C. C.* 602 ; 2 *C. & K.* 983 ; *Reg. v. Perkins*, 2 *Den. C. C.* 459 ; 21 *L. J. M. C.* 152).

On writ of error. And by sect. 5, on a writ of error upon any judgment in any indictment, information, presentment, or inquisition, the court of error may reverse the judgment, or pronounce the proper judgment, or remit the record to the case below. (*R. v. Holloway*, 2 *Den. C. C.* 287.)

On a case stated by justices.]—Where a case granted by justices under the 20 & 21 Vict. c. 43, has been defectively stated, the court will not as a general rule send the case back to be amended on motion before argument; (*Christie v. Guardians of the Poor of St. Luke, Chelsea*, 8 B. & E. 992; 27 L. J. M. C. 153;) but where an order had been given in evidence, and there was a dispute as to that fact, and the justices omitted to send it up with the case, the court made a rule absolute, before the case came on to be argued, for the case to be sent back to the justices to be more fully stated. (*The Yorkshire Tire and Axle Company v. Rotherham Local Board of Health*, 27 L. J. C. P. 235.) But upon the argument of a case stated, the court will not amend an order made upon one section of an Act by altering it into an order under another section, so as to deprive the party convicted of a right of appeal which he would have had from the order, if it had been originally drawn in the amended form. (*Shackell v. West*, 2 E. & E. 326; 29 L. J. M. C. 45.)

Simple powers of amendment are conferred upon the judges of the county courts under the County Court Acts and Rules, but there is no power of amending a judgment summons upon a judgment obtained under the Act, by adding the name of the husband of a woman who had obtained a judgment when a *feme sole*, and subsequently married, and therefore a man who swore falsely on the hearing of such amended summons, could not be convicted of perjury. (*Reg. v. Pearce*, 3 B. & S. 531; 32 L. J. M. C. 75.)

2. By Statute.

Of case stated by justices.

County Court Acts.

Judgment summons.

2. BY SESSIONS.

By 5 Geo. II. c. 15, "On all appeals to the sessions against the judgments or orders of any justices of the peace, the sessions shall cause any defect of form that shall be found in any such judgments or orders to be rectified and amended, without any costs to the parties concerned, and after such amendment shall proceed to hear, examine, and consider the truth and merits of all matters concerning such judgments or orders, and examine proofs relating thereto and make such determinations as if there had not been any defect or want of form."

Orders or judgments of justices.

Upon the 5 Geo. II. c. 15, above recited, it had been holden that the substitution of the name of one parish for the other, obviously by the mistake of the clerk, as where an order after the adjudication that the settlement was Huggershall, directed the pauper to be removed to Harrow, was a defect in form and amendable; (*R. v. Harrow on the Hill*, 2 Bott, 706); and when an order of removal was directed to the churchwardens and overseers of the parish of L., and it appeared that L. was a village and had no churchwardens, it was amended as a defect of form; (*R. v. Inhabitants of Amluch*, 3 D. & R. M. C. 303); but that if an order of removal omitted the statement that the removal was upon the complaint of the parish officers or the statement that the pauper was actually chargeable, or to show the jurisdiction of the removing justices, it was defective as a matter of substance and not amendable. (*R. v. Great Bedwin*, Burr. Sett. Cas. 163.)

Orders of removal, &c.

Now by the 12 & 13 Vict. c. 45, s. 7, which recites that, "Whereas in many cases where the justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have on appeal to the general or quarter sessions of the peace, or on removal by *certiorari* into the Court of Queen's Bench, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matters in question," it is enacted "That if upon the trial of any appeal to any court of general or quarter sessions of the peace, against any order or judgment made or given by any justice or justices of the peace,

2. By Statute. or if upon the return to any writ of *certiorari*, any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment, to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon, as if no such omission or mistake had existed. Provided always, that no objection on account of any omission or mistake, in any such order or judgment brought upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such *certiorari*."

Under this section where, on an order made by borough justices, they were described as justices for the borough, the court amended the order after it had been brought up by *certiorari*, by inserting the words "in and" before the word "for;" (*R. v. Hellingley*, 1 *E. & E.* 749; 28 *L. J. M. C.* 167,) and would not grant costs. But under the 16 & 17 Vict. c. 97, the court held that the sessions could not amend an order of maintenance addressed to the "churchwardens and overseers of the poor of the parish of Liverpool," by inserting instead the words "guardians of the poor of the parish of Liverpool." There were in fact in that case two bodies, the overseers and the guardians, and the court assigned as the reason for not allowing the amendment, that it would be making a new order on new parties. Had it been a mere mistake, such as a misnomer, and the order had been served on the guardians, the amendment would probably have been allowed. (*Reg. v. Inhabitants of Liverpool*, 2 *E. & E.* 687; 29 *L. J. M. C.* 137.)

Recognizances.

By sect. 8 of the same Act, after reciting that "the statutes giving a right of appeal against orders or summary convictions frequently require a recognizance or recognizances to be entered into as a condition of such appeal, and appellants are liable to be prevented from trying their appeals upon the merits in consequence of imperfections in the taking of such recognizances," it is enacted, "That where any recognizance or recognizances which shall have been entered into, within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal, shall appear to the court before which such appeal is brought, to have been insufficiently entered into or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance, or new and sufficient recognizances, to be entered into before such court, in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time and make such examination and impose such terms with respect to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable, and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any statute or statutes for that purpose."

Grounds of appeal.

By sect. 3 of the same Act, "It is enacted with reference to the statement of grounds of appeal required by that or any other Act, that the court of general or quarter sessions should allow no objection on account of any defect in the form of setting forth any ground of appeal, nor to the reception of legal evidence offered in support of any ground of appeal, unless the court should be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same, to inquire into the subject of such statement, and to prepare for trial." And it is *provided*, "That in all cases where the court shall be of opinion that any objec-

tion to any ground of appeal, or to the reception of evidence in support thereof ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or to postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement as to such court shall appear just and reasonable."

And by sect. 9 of the same Act, it is further enacted "That the decisions of the court of general or quarter sessions of the peace, upon the hearing of any appeal as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari*, a *mandamus*, or otherwise."

By the 4th section of the 11 & 12 Vict. c. 31, which recites that a statement of grounds of removal or appeal is required to be communicated by and to the respective parties to an appeal before the hearing of the appeal, it is enacted in the proviso that in all cases where the court shall be of opinion that any objection (of the nature therein mentioned) to such statement or to the reception of evidence ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such statement of grounds of removal or appeal to be forthwith amended by some officer of the court or otherwise, on such terms, &c., as to such court shall appear just and reasonable.

And now by sect. 6 of the same Act, if upon the trial of any appeal against an order of removal, or upon the return of a writ of *certiorari*, any objection shall be made on account of any omission or mistake in the drawing up of such order, and it shall be shown to the satisfaction of the court, that sufficient grounds were in proof before the magistrates making such order to have authorized the drawing up thereof, free from the said omission or mistake, it shall be lawful for the court upon such terms as to payment of costs as it shall think fit, to amend such order of removal, and to give judgment, as if no such omission or mistake had existed.

And by sect. 7 of the same Act the decision of the court as to such amendments is final. (See also 12 & 13 Vict. c. 45, s. 9, *supra*.)

The powers of amendment of grounds of removal conferred upon the quarter sessions by the 11 & 12 Vict. c. 31, s. 4, have been held to extend to the addition of an entirely new ground; (*Reg. v. The Inhabitants of Llangenny*, 4 B. & S. 311; 32 L. J. M. C. 665; and see *Reg. v. Ruyton, Inhabitants of*, 1 B. & S. 534; 30 L. J. M. C. 229;) but it certainly seems that the language of the Act was strained by the court, in order to remedy the mischief to meet which the Act was passed. The lord chief justice dissented from so extensive an interpretation of the statute in the earlier case, and was no party to the decision in the later. But the court was unanimous in both cases in deciding that the 7th section made the decision of the sessions final as to any question as to the sufficiency of the statement of the grounds of removal, and of the admissibility of evidence in support thereof, and that the court of sessions had no power to state a case for the opinion of the court above, or the court above to review the decision. (*Ib.*)

By 12 & 13 Vict. c. 45, s. 10, "That every court of general or quarter sessions of the peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended, which is given to courts of oyer and terminer, and general gaol delivery, with regard to offences

2. By Statute.

Decisions of quarter sessions as to amendment to be final.

Statement of grounds of removal or appeal.

Order of removal.

Of grounds of removal.

Indictments at sessions.

As to variances in writings.

2. *By Statute.* tried before such last-mentioned courts, by virtue of an Act of the twelfth year of her present Majesty's reign, intituled 'An Act for the Removal of Defects in the Administration of Criminal Justice,' and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared." (See as to 11 & 12 Vict. c. 46, and the amendments now to be made in indictments generally, *ante*, p. 164, *et seq.*)

11 & 12 Vict.
c. 46.

Further powers of amendment of indictments are conferred on sessions by the 14 & 15 Vict. c. 100, which extends the powers of amendment conferred on the sessions by the 12 & 13 Vict. c. 45. (See *ante*, p. 164).

After plea in
abatement.

The 7 Geo. IV. c. 64, s. 19, gives power to amend after a plea in abatement; but since the 14 & 15 Vict. c. 100, s. 24, the plea in abatement for the want of or imperfection in the addition of a defendant would be of no avail.

Crown case
reserved.

The 11 & 12 Vict. c. 78, gives the Court of Crown Cases Reserved power to send back a case for amendment, which may thereupon be amended. (See *ante*, p. 168. As to amendments of poor-rates, see tit. "Poor.")

3. BY JUSTICES OUT OF SESSIONS.

Convictions.

A justice may draw up a conviction at any time before the return of the *certiorari*, although after a commitment, (*Massey v. Johnson*, 12 East, 82,) or at any time before the return to a writ of habeas corpus, (*Ex parte Smith*, 3 H. & N. 227; 27 L. J. M. C. 186; *R. v. Richards*, 5 Q. B. 926,) or after the penalty has been levied by distress, (*R. v. Barker*, 1 East, 186,) or after action brought against the magistrate, (*Lindsay v. Leigh*, 11 Q. B. 455; *Gray v. Cookson*, 16 East, 21,) and even after a conviction has been returned to the sessions, he may substitute an amended one for it. (*Selwood v. Mount*, 9 Car. & P. 75; *Chaney v. Payne*, 1 Q. B. 723.)

But the amended conviction must be drawn up before the first conviction has been quashed, or before the defendant has been discharged, if the discharge was by reason of the invalidity of the conviction recited in a warrant of commitment, for in such a case the discharge is equivalent to quashing the conviction. (*Chaney v. Payne*, 1 Q. B. 712; *Charter v. Greame*, 13 Q. B. 216.) But it must be clearly shown to the court to which the return is made to the writ of *certiorari* or habeas corpus, that the amended convictions or warrants had come from the same justices as originally convicted or committed the defendant. (*Re Elmy v. Sawyer*, 1 A. & E. 843; *Ex parte Smith*, 3 H. & N. 227; 27 L. J. M. C. 186.)

So, if the justice has delivered to the defendant a copy of the conviction as that upon which the subsequent proceedings have been founded, he is not precluded from drawing up and returning a conviction in a formal shape. (*Basten v. Carew*, 5 D. & R. 558; 3 B. & C. 649; *R. v. Allen*, 15 East, 333.)

On appeal.

As to the amendment of convictions and orders on appeal to quarter sessions, see the 12 & 13 Vict. c. 45, s. 7, *ante*, 169.

Excise.

The Excise Acts allow amendments by justices of the peace in any information, conviction, or warrant of commitment for any offence under those Acts, see *post*, "Excise."

Warrant of
commitment.

A good warrant of commitment may be substituted on the return to a writ of habeas corpus, if the facts admit of it, in the place of the warrant upon which the committal took place. (*Reg. v. Smith*, 3 H. & N. 227; 27 L. J. M. C. 186; *Ex parte Cross*, 2 H. & N. 354; 26 L. J. M. C. 201.)

Amicus Curia.

IF a judge is doubtful or mistaken in matter of law, a stander-by may inform the court as *amicus curia*. (2 Co. Inst. 178.) Any one as *amicus curia* may move to quash a bad indictment. (Comb. 13.) It seems the party himself should be present. (2 Show. 297.)

Anchors and Chain Cables.

[27 & 28 Vict. c. 27.]

FOR the better security of the lives and property afloat in sea-going ships, the 27 & 28 Vict. c. 27 was passed to regulate the purchase and sale of chain cables and anchors.

1. No chain cables or anchors over 168lbs. weight to be sold unless tested and stamped. (Sect. 11.)

2. Counterfeiting stamp, or selling knowing to be wrongly stamped, a misdemeanour. (Sect. 12.)

By sect. 11, "From and after the 1st of July, 1865, it shall not be lawful for any maker of or dealer in chain cables or anchors, to sell or contract to sell for the use of any vessel, any chain cable whatever, or any anchor exceeding in weight 168lbs., unless such chain cable or anchor shall have been previously tested and duly stamped in accordance with the provisions of this Act; and if any person acts in contravention of this provision, he shall for every such offence, upon a summary conviction for the same before a justice of the peace, or in Scotland before any sheriff, justice, or magistrate, be liable to a penalty not exceeding fifty pounds."

Anchors and
cables to be
tested and
stamped before
sale.

By sect. 12, "If any person shall stamp or assist in stamping any chain cable or anchor with the stamp of any tester, or with a stamp or mark purporting to be the stamp of any tester, without the authority of the tester, whose stamp shall have been so used or counterfeited, or with any other stamp or mark, for the purpose or with the intention of passing such chain cable or anchor, or of allowing or assisting in the same being passed as a chain cable or anchor duly tested and stamped under the powers of this Act, or if any person, knowing any such chain cable or anchor to have been so wrongfully marked or stamped as aforesaid, shall sell the same, or deliver the same to any person to be taken or used as part of the equipment of any vessel, or if any person shall write out and deliver to any person any certificate or document purporting to be a certificate under this Act, that any chain cable or anchor has been tested and stamped under the provisions of this Act, knowing that the chain cable or anchor referred to in such certificate or document had not been so tested or stamped, every person so offending shall be guilty of a misdemeanour, or in Scotland of an offence, and for every such misdemeanour or offence shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." This Act is to continue in force to the 1st of July, 1872, and no longer.

Improper stamp-
ing a mis-
demeanour, &c.

The Act is not to affect contracts with the admiralty, s. 14.

The Act contains provisions for the appointment and licensing of testers and testing apparatus, ss. 6—10, and certificates of testing to be granted by them.

1. *Importation of.***Animals.**

[11 & 12 Vict. c. 105; 11 & 12 Vict. c. 107; 16 & 17 Vict. c. 62; 29 Vict. c. 2, 15, 110; 30 & 31 Vict. c. 125.]

- I. *Importation of, and Regulations respecting Landing of Foreign Animals*, 174.
- II. *Buying and Selling of*, 175.
- III. *Regulation of Sale of Diseased Cattle and Food, and Movement of Infected Animals*, 176.
- IV. *Discovery and Suppression of Disease*, 178.
- V. *Slaughtering Cattle and Animals*, 198.
- VI. *Cruelty to Animals*, 208.

THE law relating to foreign and diseased cattle and other animals is now contained in the 11 & 12 Vict. c. 105, 11 & 12 Vict. c. 107, 16 & 17 Vict. c. 62; "The Cattle Diseases Prevention Act, 1866" (29 Vict. c. 2), 29 Vict. c. 15; "The Cattle Diseases Prevention Amendment Act, 1866" (29 Vict. c. 110); "The Contagious Diseases (Animals) Act, 1867" (30 & 31 Vict. c. 125).

As to stealing of, and killing with intent to steal, see "*Larceny*," Vol. III. As to slaughtering horses, &c., and some laws relating to them, see "*Horses*," Vol. III.

As to Dogs, see *post*, "*Dogs*," Vol. II.

As to killing and maiming of, see "*Malicious Injuries to Property*," Vol. III.

I. *Importation of, and Regulations respecting the Landing of Foreign Animals.*

Importation of.

The importation of cattle from foreign countries and the colonies is now regulated in general, and the duties fixed by the excise. (See "*Excise and Customs*," Vol. II.)

By 11 & 12 Vict. c. 105, intituled "An Act to Prohibit the Importation of Sheep, Cattle, or other Animals, for the purpose of preventing the Introduction of Contagious or Infectious Disorders," [4th September, 1848,] reciting that "it is expedient, in order to prevent the introduction of contagious or infectious disorders among sheep, cattle, horses, and other animals, that power should be given to her Majesty in council to take such measures as may appear to be necessary for preventing or regulating the importation of animals from parts beyond the seas where such infectious or contagious disorders prevail:" it is enacted (sect. 1), "That it shall be lawful for her Majesty, from time to time, by order in council, to prohibit the importation or introduction into the United Kingdom, or into any particular port or ports thereof, of cattle, sheep, horses, or other animals, either generally or from any place or places that may be named in such order, for such period or periods as she may deem to be necessary, for the purpose of preventing the introduction of any infectious or contagious disorder among the sheep, cattle, horses, or other animals in this country."

Power to prohibit.

Power to make, by order in council, regulations for subjecting sheep and other animals to quarantine.

Sect. 2. "That it shall be lawful for her Majesty from time to time, by order in council, to make such regulations for subjecting sheep, cattle, horses, or other animals to quarantine, or for causing the same to be destroyed upon their arrival in this country, or for destroying any hay, straw, fodder, or other article whereby it appears to her that

infection or contagion may be conveyed, and generally to make such regulations with respect to the importation of sheep, cattle, horses, or other animals, as she may consider to be necessary in order to prevent the introduction of any contagious or infectious disorder."

Sect. 3. "That if any cattle, sheep, horses, or other animals be imported or introduced, or attempted to be imported or introduced, contrary to the provisions of any order or orders in council made in pursuance of this Act, the same shall be forfeited in like manner as goods prohibited to be imported by any Act relating to the customs; and all persons importing or introducing, or attempting to import or introduce the same shall be liable to such penalties as are imposed on persons importing or attempting to import goods prohibited by Acts relating to the customs."

Sect. 4. "That it shall be lawful for her Majesty, by any further order or orders in council, from time to time to revoke the whole or any part of any order or orders issued by her Majesty in council under the authority of this Act; and that from and after a day to be named in such order or orders of revocation, such order or orders issued under the authority of this Act, or such part thereof as shall be specified in such order or orders of revocation, shall cease and determine."

Sect. 5. "That every order or orders in council issued under the authority of this Act shall, within fourteen days after the issuing thereof, be twice published in the *London Gazette*; and that a copy of every order or orders in council issued under the authority of this Act shall be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of Parliament."

By 30 & 31 Vict. c. 125, sect. 46, "The Privy Council may from time to time by order regulate the landing in Great Britain of foreign animals (that is to say, animals brought by sea from any place out of the United Kingdom), either as regards the port or ports or as regards the part or parts of the port or ports at which such animals may be landed, and may define the limits of such ports for the purposes of this Act, and may from time to time by order prohibit or regulate the removal and regulate the disposal, by slaughter or otherwise, of such animals from or at any such port or any part thereof."

By sect. 47, "It shall be lawful for the local authority to provide, erect, and fit up proper places for the sale of such animals, lairs for and slaughter of the same, and for such purpose they may purchase or hire land or buildings; and section twenty-six of 'The Cattle Diseases Prevention Act, 1866,' shall be deemed to extend to such purchase or hiring, and to enable the local authority in that behalf, and the local authority may charge for the use of such places such rates as they shall from time to time appoint, with the approval of the Privy Council; and all expenses of the execution by local authorities of the powers of this section shall be deemed expenses incurred by them in pursuance of this Act." (See 29 Vict. c. 2, s. 26, *post*, 184. As to the local authority, see *post*.)

2. *Buying and Selling, &c., of.*

Cattle, &c., imported contrary to provisions of orders in council to be forfeited.
Penalty on importing, &c.

Orders in council may be revoked in whole or in part from time to time.

Orders in council to be published in the *London Gazette*.

Regulations respecting landing, &c., of foreign animals.

Places for sale, slaughter, &c., may be provided by local authority.

II. *Buying and Selling, &c. of.*

By stats. 3 & 4 Edw. VI. c. 19, and 3 Car. I. c. 4, ss. 7 and 8, no person shall buy any ox, steer, roan, cow, heifer, or calf, and sell the same again alive in the same market or fair, on pain of forfeiting double value, half to the king, and half to him who shall sue. And the said statute 3 & 4 Edw. VI. c. 19, is not repealed by stat. 12 Geo. III. c. 71, which repeals the general forestalling, ingrossing, and regrating Act of

None shall buy and sell in the same market.

2. *Buying and Selling, &c., of.*

Factor buying for himself.

5 & 6 Edw. VI. c. 14, and other subsequent Acts enforcing the same; but hath no reference to any preceding Act. But it seems questionable, by the statutes 3 & 4 Edw. VI. c. 19, and 3 Car. I. c. 4, ss. 7 and 8, be not expired.

By 31 Geo. II. c. 40, no salesman, broker, or factor, employed in buying cattle for others; shall buy for himself in *London*, or within the *Bills of Mortality*, on penalty of double the value of the cattle bought or sold.

Any person offering for sale any horse, cow, sheep, or cattle to a slaughter house keeper to be slaughtered, and unable to give a satisfactory account of himself, may be detained and taken before a justice. (See 26 Geo. III. c. 71, *post*, p. 203.)

III. Regulation of Sale of Diseased Animals, and Food, and as to Movement of Infected Animals.

As to sheep.

Sheep infected with sheep pox or the like disorder, exposed for sale may be seized and destroyed, together with pens, hurdles, &c.

Penalty on parties exposing sheep or cattle for sale, knowing them to be so diseased.

Penalty on persons depasturing sheep, &c., so diseased.

As to horses.

Penalty on persons bringing glandered horses, &c., into market, or turning them out on uninclosed land.

By 11 & 12 Vict. c. 107, intituled "An Act to Prevent, until September 1, 1850, and to the end of the then Session of Parliament, the Spreading of Contagious or Infectious Disorders among Sheep, Cattle, and other Animals," [which Act is continued in force by 28 & 29 Vict. c. 119,] after reciting that a contagious or infectious disorder, known or described as the sheep pox or variola ovina, now prevails among the sheep in some parts of the United Kingdom, and that it is necessary to take measures to prevent such disorder from spreading, enacts, "That in case any sheep or lambs infected with or labouring under the said disorder, or any disorder of the like nature, be exposed or offered for sale, or be brought or attempted to be brought for the purpose of being so exposed or offered for sale, in any market, fair, or other open or public place where other animals are commonly exposed for sale, then and in any such case it shall be lawful for any clerk or inspector or other officer of such fair or market, or for any constable or policeman, or for any other person authorized by the mayor, or by any two justices of the peace having jurisdiction in the place, or for any person authorized or appointed by her Majesty in council, to seize the same, and to report such seizure to the mayor or any justice of the peace having jurisdiction in the place; and it shall be lawful for such mayor or justice either to restore the same, or to cause the same, together with any pens, hurdles, troughs, litter, hay, straw, or other articles which he may judge likely to have been infected thereby, to be forthwith destroyed or otherwise disposed of in such manner as he shall deem proper, or as may be directed in manner hereinafter provided; and any person bringing or attempting to bring any sheep, lambs, oxen, bulls, cows, calves, or other horned cattle, into any such market, fair, or open or public place as aforesaid, knowing such sheep, lambs, or cattle to be infected with or labouring under either of such disorders as aforesaid, shall, upon conviction thereof, forfeit and pay for each and every such offence a sum not exceeding twenty pounds."

Sect. 2. "That if any person turn out, keep, or depasture any sheep or lambs infected with or labouring under the said disorder in or upon any forest, chase, wood, moor, marsh, heath, common, waste land, open field, road side, or other undivided or uninclosed land, such person shall, on conviction thereof, forfeit and pay any sum not exceeding twenty pounds."

By 16 & 17 Vict. c. 62, s. 1, "Any person bringing or attempting to bring for sale any horse or other animal into any market, fair, or other open or public place where animals are commonly exposed for sale,

knowing such horse or other animal to be infected with or labouring under the disease called glanders, and any person turning out, keeping, or depasturing any horse or other animal infected with or labouring under any such disease in or upon any forest, chase, wood, moor, marsh, heath, common, waste land, open field, road side, or other undivided or uninclosed land, shall, on conviction of any such offence, forfeit and pay any sum not exceeding twenty pounds; and the 11 & 12 Vict. c. 107, shall be read and construed as if this enactment were incorporated therein, and all the provisions of the said Act with respect to the penalties or forfeitures thereby imposed, and the recovery and application thereof, shall be applicable accordingly."

"The said Act as extended by this Act shall continue and be in force until the first day of September, One thousand eight hundred and fifty-six, or if Parliament be then sitting until the end of the then session of Parliament." The above Acts are continued in force by the 28 & 29 Vict. c. 119, and are amended by the 29 Vict. c. 15.

To bring a horse infected with glanders into a public place to the danger of infecting the Queen's subjects, knowing that the horse is glandered, is a misdemeanour at common law. (*Reg. v. Hewson*, 1 *Dears*, C. C. 24.)

By 30 & 31 Vict. c. 125, s. 49, "If any person exposes for sale in a market or fair cattle affected with pleuro-pneumonia, or sheep affected with scab, he shall be deemed guilty of an offence against this Act, unless he shows to the satisfaction of the justices before whom he is charged that he did not know of the same being so affected, and that he could not with reasonable diligence have obtained such knowledge."

By 11 & 12 Vict. c. 107, s. 3, "If any meat unfit for human food be exposed or offered for sale in any market, fair, or other open or public place, it shall be lawful for such clerks, inspectors, constables, policemen, or other persons authorized as aforesaid, to seize the same, and to report such seizure to such mayor or justice as aforesaid; and such mayor or justice may either order the same to be restored, or to be destroyed or otherwise disposed of as aforesaid; and any person publicly exposing or offering such meat for sale shall, upon conviction, forfeit and pay for each and every such offence a sum not exceeding twenty pounds."

By 26 & 27 Vict. c. 117, s. 2, "Nuisances Removal Act for England (Amendment), 1863," it is provided, "The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, &c., exposed for sale or deposited in any place for the purpose of sale and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes or was not intended for the food of man resting with the party charged, and in case any such animal, carcase, meat, poultry, game, flesh, fish, &c., appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice, and if it shall appear to the justice that any such animal or any of the said articles is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food, and the person to whom any such animal, carcase, meat, poultry, game, flesh, fish, &c., belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found shall, upon conviction, be liable to a penalty not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game so found, or at the discretion of the justice

3. *Diseased Animals.*

Recited Act continued until 1st Sept., 1856, and end of then session.

Exposure for sale of cattle affected with pleuro-pneumonia, or sheep with scab.

As to meat unfit for human food. Penalty on persons exposing for sale meat unfit for human food.

Power of medical officer or inspector of nuisances to inspect food exposed for sale.

3. *Diseased Animals.*

without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months."

By sect. 3, "In case any person shall in any manner prevent such medical officer of health or inspector of nuisances from entering any slaughter house, shop, building, market, or other place where such animal, carcase, meat, poultry, or fish is kept for the purpose of sale or of preparation for sale, or shall in any manner obstruct or impede him or his servant or assistant when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding five pounds."

Privy Council may make regulations as to removal of sheep, &c., and other animals;

as to purifying yards, stables, &c., and disposal of animals dying in an infected state; and as to giving notice of appearance of disease, &c.

Penalty for offending against the same.

Construction of Act.

Construction of terms.

Application of Act.

By 11 & 12 Vict. c. 107, s. 4, "It shall be lawful for the lords and others of her Majesty's Privy Council, or any two or more of them, from time to time to make such orders and regulations as to them may seem necessary for the purpose of prohibiting or regulating the removal, to or from such parts or places as they may designate in such order or orders, of sheep, cattle, horses, swine or other animals, or of meat, skins, hides, horns, hoofs, or other parts of any animals, or of hay, straw, fodder, or other articles likely to propagate infection; and also for the purpose of purifying any yard, stable, outhouse or other place, or any waggons, carts, carriages, or other vehicles; and also for the purpose of directing how any animals dying in a diseased state, or any animals, parts of animals or other things seized under the provisions of this Act, are to be disposed of; and also for the purpose of causing notices to be given of the appearance of any disorder among sheep, cattle or other animals, and to make any other orders or regulations for the purpose of giving effect to the provisions of this Act, and again to revoke, alter or vary any such orders or regulations; and all provisions for any of the purposes aforesaid in any such order or orders contained shall have the like force and effect as if the same had been inserted in this Act; and all persons offending against the same shall for each and every offence forfeit and pay any sum not exceeding twenty pounds, or such smaller sum as the said lords or others of her Majesty's Privy Council may in any case by such order direct."

The 29 Vict. c. 15 recites this section, and enacts that the two Acts shall be construed together.

By 30 & 31 Vict. c. 125, s. 3, "This Act shall be read as one Act with the Acts enumerated in the first schedule to this Act as far as they remain in force after the passing of this Act, which Acts are in this Act referred to as the former Acts, and for that purpose the term 'this Act,' where used in any of the former Acts, shall be construed to include the present Act, and where used in this Act shall be construed to include each of the former Acts, unless there is something in the subject or context inconsistent with such construction; and such of the former Acts as are first, secondly, and fourthly described in that schedule may be cited by the respective short titles appended to the descriptions thereof in that schedule; and the former Acts and this Act may be cited together as 'The Contagious Diseases (Animals) Acts.'" (For schedules, see *post*, 197.)

By 29 Vict. c. 15, s. 2, "This Act, and the principal Act in so far as it is amended by this Act, shall not extend to Ireland."

IV. *Discovery and Suppression of Disease.*

(1.) OF PRIVY COUNCIL AND CATTLE PLAGUE ORDERS.

Definition of "Privy Council."

By 29 Vict. c. 15, s. 3, "'Privy Council' shall mean the said lords and others of her Majesty's Privy Council, or any two of them."

By 30 & 31 Vict. c. 125, s. 4, "Notwithstanding anything in any of the former Acts, the term 'Privy Council' in the former Acts and this Act, shall, as regards the making of orders of council affecting only ports, boroughs, towns, or places, or parts thereof specified in such orders, and as regards the issuing and revocation of licenses under an order of council, be construed to mean the lords and others of her Majesty's Most Honourable Privy Council, or any two of them, or the Lord President of the Council, or one of her Majesty's principal Secretaries of State."

4. *Discovery of Disease.*

Meaning of
"Privy Council."

By 29 Vict. c. 15, s. 4, "The orders made under the principal Act by the said Privy Council, and dated respectively the twenty-fourth day of March and the eleventh day of April, One thousand eight hundred and sixty-six, shall be deemed to have been authorized by the said principal Act, and to be of the same force as if contained in the said Act, subject to the power of the said Privy Council to alter, vary, or revoke the same."

Orders made
under 11 & 12
Vict. c. 107,
deemed autho-
rized by the
same.

"And the said Privy Council may, under the authority of the said principal Act, make the like or any other orders which they may deem it expedient to make for the purpose of preventing the spreading within Great Britain of contagious or infectious disorders amongst animals, and may in any such order direct the slaughtering of any animals affected by such disorders. And the said Privy Council may require any local authority, by themselves or their officers, or by any committee appointed by such local authority, to carry into effect within their district any such orders, and may authorize any local authority or committee of such local authority to make any regulations for the purpose of preventing the spreading of such disorders, subject to such conditions as may be imposed by the said Privy Council."

By 30 & 31 Vict. c. 125, s. 30, "The Privy Council may from time to time by order declare that such of the provisions of this Act, and of any order of the Privy Council under it, as relate to the metropolis, or any of those provisions, shall also extend and apply to any town, city, parish, or place specified in the order, and the same shall extend to such town, city, parish, or place accordingly; and the Privy Council may at any time revoke, or from time to time vary, any such order."

Provisions for
towns, &c.

By 11 & 12 Vict. c. 107, s. 5, "All orders and regulations made under the authority of this Act shall, within fourteen days after the issuing thereof, be twice published in the *London Gazette*; and in case such orders or regulations apply to any particular places or districts, then the same shall also be twice published, within fourteen days as aforesaid, in some newspaper or newspapers circulating in the county or counties within which each of such places or districts, or any part or parts thereof respectively, is or are situated."

Publication of
orders, &c.

By 29 Vict. c. 15, s. 7, "Notwithstanding anything contained in the principal Act, any order or regulation made by the Privy Council in pursuance of the principal Act and this Act, or either of such Acts, shall be valid if published once in the *London Gazette*, unless it relates to any particular county, town, or other place, in which case it shall not be valid unless it be also published in some newspaper circulating in such county, town, or other place, or in such other manner as the Privy Council may direct."

Publication of
orders by the
Privy Council
valid.

"Any order or regulation made by a local authority shall be published in such manner as the Privy Council may direct."

"The expense of the local publication of any order or regulation of the Privy Council shall be defrayed by the local authority of the place where any such order or regulation is published, and the expense of publishing any order or regulation of a local authority shall be defrayed by such local authority."

By 30 & 31 Vict. c. 125, s. 51, "An order of the Privy Council affecting only a particular port, borough, town, or place, or part thereof

Publication of
orders, &c., issued
by Privy Council.

4. *Discovery of Disease.*

specified in such order, or declaring a place to be an infected place, or to be free from cattle plague, and a license under an order of the Privy Council, or a revocation of such a license, issued or made either before or after the passing of this Act, shall not be deemed an order or regulation made by the Privy Council within the meaning of section seven of 'The Contagious Diseases (Animals) Act, 1866;' and any such orders, license, or revocation as in this section described shall be deemed to be and to have been valid if a notice of the issuing thereof is or has been published once in the *London Gazette*.

"Any such order, license, or revocation shall be published by and at the expense of any local authority to whom the same is sent by the Privy Council for publication in some newspaper circulating in the district of the local authority, or in such other manner as the Privy Council direct."

Evidence of orders.

By 29 Vict. c. 15, s. 8, "Any order or regulation of the Privy Council made before or after the passing of this Act in pursuance of the principal Act and this Act, or either of such Acts, may be proved by the production of a copy of the *Gazette* containing such order, or by the production of a copy of such order purporting to be printed by the printers of her Majesty. Any order or regulation made or issued before or after the passing of this Act by any local authority in pursuance of the principal Act and of this Act, or either of such Acts, or in pursuance of any order of the Privy Council made under such Acts or either of them, may be proved in any of the modes hereinafter mentioned :

First, by the production of a copy of a newspaper containing a copy of such order or regulation ; or,

Secondly, by the production of a printed copy of such order or regulation, purporting to be certified to be a true copy by the clerk of the peace where the authority are justices in general or quarter sessions assembled, or by the clerk of supply in the case of counties in Scotland, or by the town clerk or other officer performing the duties of a town clerk in the case of an authority having a town clerk or other officer as aforesaid, or by such other officer as the said Privy Council may prescribe :

And any order or regulation mentioned in this section shall, until the contrary is proved, be deemed to have been duly made and issued at the time at which it bears date ; and in the case of an order declaring a place to be an 'infected place' by reason of the existence therein of any infectious or contagious disorder amongst animals, the order itself shall be conclusive evidence of the existence of such disorder."

Instruments may be in print, &c.

By 30 & 31 Vict. c. 125, s. 52, "Any order, license, regulation, or other instrument made under this Act, or under any order of the Privy Council thereunder, may be in writing or print, or partly in writing and partly in print."

And to be laid before Parliament.

By 11 & 12 Vict. c. 107, s. 6, "That a copy of every such order or orders shall be laid before both houses of parliament within six weeks after issuing the same, if parliament be then sitting, and if parliament be not then sitting, then within six weeks after the commencement of the then next session of parliament."

(2.) LOCAL AUTHORITY.

Definition of "district," "local authority," "local rate," and "clerk of local authority."

By 29 Vict. c. 2, s. 4, "For the purposes of this Act 'district,' 'local authority,' 'local rate,' and 'clerk of local authority,' shall respectively mean the places, bodies of persons, rate, and officer in the first schedule hereto annexed in that behalf mentioned : Provided that within the City of London and the liberties thereof the court of the Lord Mayor and Aldermen shall, for all the purposes of this Act, except that of making a rate, be deemed the local authority, but for the purpose of making a rate for the purposes of this Act the Metropolitan

Board of Works shall be the local authority. The schedule referred to in the above section is not set out in this article.

Sect. 5. "As soon as conveniently may be after the passing of this Act the commissioners of supply in every county in Scotland shall meet and nominate not less than four or more than fifteen of their number to act on the county board for the purposes of this Act, and shall intimate to the lord lieutenant of the county and the convener of the county the number and names of the persons so appointed; and the lord lieutenant shall forthwith nominate an equal number of persons being tenants of agricultural subjects, valued in the valuation roll in force for the time at one hundred pounds a year or upwards, within such county to act on the county board, and shall intimate the names of the persons so nominated to the convener of the county, and the persons so nominated by the commissioners of supply and lord lieutenant respectively, and also the said lord lieutenant, the convener of the county, and the sheriff of the county, or, in his absence, any of his substitutes within such county as he may direct, shall constitute the local authority; and so far as not otherwise provided by this Act such local authority shall have all the powers conferred on the local authority by this Act, and shall have power to elect a chairman, specify a quorum, and make all regulations necessary for carrying the purposes of this Act into effect."

By 30 & 31 Vict. c. 125, s. 6, "With respect to section five of 'The Cattle Diseases Prevention Act, 1866,' relating to local authorities in counties in Scotland, vacancies from time to time happening by death, resignation, or otherwise, among the members of such a local authority, shall be filled up by the authority and in the manner by and in which the members vacating office were respectively nominated; and the persons nominated as in that section or in this section provided, and the lord lieutenant of the county, the convener of the county, and the sheriff of the county (or in his absence such one of his substitutes within the county as he directs by writing under his hand), for the time being, shall constitute the local authority; and the chairman of the local authority, and in default of him the convener of the county, and in default of him any three members of the local authority, may at any time call a meeting of the local authority, to be held at such time and place as he or they may fix."

By 29 Vict. c. 2, s. 6, "Where the general or quarter sessions in any county do not stand adjourned to some day not later than seven days after the passing of this Act, such sessions shall notwithstanding be deemed, by virtue of this Act, to stand adjourned to Monday in the first week succeeding the week in which this Act passes."

Sect. 7. "The first meeting of the local authority in Scotland shall be held on a day to be fixed and notified by the convener of the county, and the local authority may adjourn from time to time as they may think fit."

Sect. 8. "Any local authority may form one or more committee or committees consisting wholly of its own members, or partly of its own members and partly of such other persons being rated occupiers in the district, and qualified in such other manner as the local authority may determine, and may delegate to such committee all or any powers conferred on them by this Act, excepting the power to make a rate, and may from time to time revoke or alter any power so given to such committee."

"A committee may elect a chairman of their meetings. If no such chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as they think proper. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes, the chairman shall have a second or casting vote."

4. *Discovery of Disease.*

Appointment of local authority in counties in Scotland.

Local authority in counties in Scotland.

Power to assemble adjourned sessions.

Meeting of local authority in Scotland.

Power to local authority to form committee of its own members and others.

4. *Discovery of Disease.*

"The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members, or, in case of a committee appointed by the general or quarter sessions of a county, by the termination of the sessions by which they were appointed: Provided always, that in the case of the formation of two or more committees, such committees shall act according to such rules as shall be laid down for their guidance by such local authority."

Appointment of executive committee by local authority.

By the 30 & 31 Vict. c. 125, s. 7, "Where, under section eight of 'The Cattle Diseases Prevention Act, 1866,' a local authority forms a committee, the local authority may, if it thinks fit, appoint and designate such committee as its executive committee for the purposes of this Act, and any committee so appointed and designated shall have all the powers of the local authority except the power to make a rate, and shall have power to appoint a sub-committee or sub-committees, and to delegate to such sub-committee or sub-committees all or any of the powers of the executive committee, with or without conditions or restrictions, and from time to time to revoke or alter any such delegation, and shall also have power to fix the quorum, and from time to time to add to or diminish the number of the members, or otherwise alter the constitution, of any such sub-committee, and to lay down rules for the guidance of any such sub-committee; and every such sub-committee shall act according to such rules; and the provisions of the said section eight relative to the constitution and proceedings of committees formed by the local authority shall extend and apply to sub-committees formed by the executive committee."

Reports by local authority to Privy Council.

By 29 Vict. c. 2, s. 25, "Every local authority shall report to the Privy Council the state of the cattle plague in their district, and give such other information with respect to the cattle plague, in such form and at such time as the Privy Council may require."

Reports to Privy Council.

By 30 & 31 Vict. c. 125, s. 31, "Every local authority and every inspector appointed by a local authority shall make such reports to the Privy Council as the Privy Council from time to time require."

(3.) INSPECTORS.

Appointment of inspectors and other officers.

By 29 Vict. c. 2, s. 9, "Every local authority shall with all convenient speed appoint such number of inspectors and other officers as it shall think necessary for carrying into effect the provisions of this Act within its district. It shall assign them such duties, and award them such salaries or allowances, as it thinks expedient; and no stamp shall be required on the appointment of any officer made in pursuance of this Act. It may revoke any appointment so made: Provided that all persons appointed inspectors before the passing of this Act under the authority of any order of the Lords of her Majesty's Privy Council relative to the cattle plague, and being such at the passing of this Act, shall be cattle inspectors to act in the execution of this Act in and for the districts for which they respectively were appointed; but any such appointment may at any time be revoked by the authority that would be empowered to revoke it if it had been made under this Act."

"The certificate of an inspector of the local authority that an animal is affected by cattle plague shall for the purposes of this Act be conclusive evidence in all courts of justice and elsewhere of its having been so affected."

Appointment of inspectors by local authorities.

By the 30 & 31 Vict. c. 125, s. 8, "Notwithstanding anything in section nine of 'The Cattle Diseases Prevention Act, 1866,' every local authority shall at all times keep appointed at least one such inspector as in that section mentioned; and where there is not at the passing of this Act any such inspector for the district of any local authority, that

local authority shall with all convenient speed after the passing of this Act appoint at least one such inspector.

"The Privy Council, if satisfied on inquiry that an inspector appointed by a local authority is incompetent, or has been guilty of misconduct or neglect in the discharge of his duties, may remove him, and thereupon the local authority shall appoint another person to fill the vacancy."

By 29 Vict. c. 2, s. 10, "Any inspector or other officer authorized to carry into effect the provisions of this Act may, at all times, enter any field, stable, cow shed, or other premises within his district where he has reasonable grounds for supposing that cattle affected by the cattle plague are to be found, for the purpose of carrying into effect the provisions of this Act; and if any person refuses admission to or obstructs or impedes or aids in obstructing or impeding any such inspector or other officer, he shall for each offence be liable to a penalty not exceeding twenty pounds: Provided always, that such inspector shall, if required, state in writing the grounds on which he has entered such premises for the purpose aforesaid."

By 30 & 31 Vict. c. 125, s. 9, "Every inspector appointed by a local authority, on receiving information of the supposed existence of cattle plague in any place within his district, shall proceed to that place with all practicable speed, and execute and discharge the powers and duties by law conferred and imposed on him as such inspector."

Sect. 10. "Section ten of 'The Cattle Diseases Prevention Act, 1866,' shall be read and have effect as if the words 'any animal affected' were therein substituted for the words 'cattle affected.'"

4. *Discovery of Disease.*

Power of entry for inspectors, &c.

Penalty for impeding inspectors.

Duties of inspectors.

Extension of power of entry for inspectors, &c.

(4.) SLAUGHTER OF DISEASED ANIMALS.

By 30 & 31 Vict. c. 125, s. 15, "It shall be lawful for the inspector of the Privy Council or the inspector of any local authority to order any animal to be slaughtered for the purpose of ascertaining the nature of any disease, suspected to be cattle plague, under which such animal may be labouring; and when any animal is so slaughtered the owner of such animal shall be compensated in the manner provided by 'The Cattle Diseases Prevention Act, 1866.'"

By 29 Vict. c. 2, s. 12, "Every local authority shall cause all animals affected with the cattle plague within its district to be slaughtered, and shall, by way of compensation for every animal so slaughtered, pay to the owner thereof such sum not exceeding twenty pounds, and not exceeding one-half of the value of the animal immediately before it was affected with the cattle plague, as to such local authority may seem fit."

Sect. 13. "Every local authority shall cause every animal that has died of cattle plague, or has been slaughtered in consequence of being affected with cattle plague within its district, to be buried as soon as possible in its skin in some proper place, and to be covered with a sufficient quantity of quicklime or other disinfectant, and with not less than six feet of earth."

Sect. 14. "Every local authority shall, within its district, cause the yard, shed, stable, field, or other premises in which any animal affected with cattle plague has been kept while affected by the disease, or has died or been slaughtered, to be thoroughly cleansed and disinfected, and all hay, straw, litter, dung, or other articles that have been used in or about any such animal to be burnt or otherwise destroyed; and no fresh animal shall be admitted into any yard, shed, stable, field, or other premises in which any animal affected with cattle plague has been kept while affected by the disease, or has died or been slaughtered, until the expiration of thirty days after the cleansing and disinfecting

Cattle may be slaughtered to ascertain nature of disease.

Compensation.

Power to slaughter diseased animals.

Burial of diseased animals.

Purification of sheds, &c., of diseased animals.

4. *Discovery of Disease.*

of such premises in pursuance of this Act; and every local authority shall direct the disinfecting the clothes of, and the use of due precautions by inspectors, cattle overseers, and others in contact with animals affected by the cattle plague, with a view to prevent the spreading of contagion."

Power to order slaughter of cattle herded with diseased animals.

Sect. 15. "A local authority may, if it thinks fit, cause to be slaughtered any animal that has been in the same shed or stable, or in the same herd or flock, or in contact with any animal affected with cattle plague within its district; and the owner of any animal so slaughtered may either dispose of the carcase on his own account, with a license from some officer appointed in that behalf by a local authority, or may require the local authority to dispose of the same, in which case such local authority shall pay to the owner thereof, by way of compensation, such sum, not exceeding twenty-five pounds, as may equal three-fourths of the value of the animal slaughtered: provided always, that the lords of her Majesty's most honourable Privy Council, or any two or more of them, may reserve animals (ordered to be slaughtered as aforesaid) for the purpose of experimental treatment."

Power to ascertain value of slaughtered animals.

Sect. 16. "The local authority may require the value of any animal slaughtered under this Act to be ascertained by officers of the local authority or by arbitration, and generally may impose conditions as to evidence of the slaughter and value of the animals slaughtered: provided that no compensation shall in any case be paid in respect of any animal found affected with cattle plague in a market or on a highway, or in respect of any animal which has been moved or otherwise dealt with in contravention of this Act, or any order of a local authority made in pursuance thereof."

Power to purchase land for burial of diseased animals.

Sect. 26. "Any local authority may purchase or hire a piece or pieces of land for the purpose of burying therein animals dying of cattle plague or slaughtered under this Act, and, in the case of seaports, for the purpose of providing proper places for the slaughter of cattle which under the provisions of this Act cannot be removed alive from such ports; and in order to facilitate any such purchase the provisions of 'The Lands Clauses Consolidation Act, 1845,' relating to the purchase of land by agreement, shall be incorporated with this Act."

Power to withhold compensation in case of offences, &c.

By the 30 & 31 Vict. c. 125, s. 32, "Notwithstanding anything in the former Acts, a local authority may, if they think fit, withhold compensation in respect of any animal slaughtered, where the owner or person having the charge of such animal has been guilty, in relation to such animal, of any Act in contravention of any of the former Acts or this Act, or of any order, regulation, or license of the Privy Council or a local authority, or has, in relation to such animal, failed to comply with the provisions of any such Act, order, regulation, or license in respect of the giving of notice of disease or in any other respect."

Further provision for compensation in Scotland.

Sect. 34. "Notwithstanding anything in any of the former Acts, the local authority of a county in Scotland may, if they think fit, pay in respect of animals slaughtered in consequence of being affected with cattle plague in the interval between the passing of 'The Cattle Diseases Prevention Act, 1866,' and the constitution of the local authority, such compensation as would have been payable in respect of the same animals if the local authority had been duly constituted at the time of the same being slaughtered; and, if necessary for the purpose of making payment of such compensation, the local authority shall have and be entitled to exercise the same powers of assessing and levying money as are competent to local authorities in reference to local rates or cattle act expenses under any of the former Acts."

(5.) INFECTED PLACES.

4. *Discovery of Disease.*

By 30 & 31 Vict. c. 125, s. 11, "Where an inspector finds cattle plague to exist within his district, he shall forthwith make a declaration thereof under his hand, and shall deliver a notice under his hand of such declaration to the occupier of the field, stable, cowshed, or other premises where the disease is found, and thereupon the same, with all lands and buildings contiguous thereto in the same occupation, shall become and be an infected place, and the same shall continue to be an infected place until the determination and declaration of the local authority relative thereto in this Act provided for."

Provisional declaration of infected place by inspector.

Sec. 12. "Where an inspector makes such a declaration of the existence of cattle plague he shall with all practicable speed send a copy thereof to the Privy Council, and deliver the declaration to the local authority, who shall inquire into the correctness thereof, and if it appears to them that cattle plague existed as declared by the inspector, they shall so determine and declare, and shall prescribe the limits of the infected place; but if it appears to them that cattle plague did not exist as declared by the inspector, and the same is certified to them in writing by one or more duly qualified veterinary surgeons they shall so determine and declare, and thereupon the place comprised in the inspector's declaration or affected thereby shall cease to be an infected place."

Determination and declaration of local authority.

Sec. 13. "The following authorities, that is to say, any local authority with respect to any place within their district, and the Privy Council with respect to any place in Great Britain, may from time to time by order declare any field, stable, cow shed, or other premises in which cattle plague exists at the date of the order or has existed within seven days before that date, with or without a further area, to be from and after a time specified in the order an infected place."

Declaration of infected place by local authority or council.

Sec. 14. "The area of an infected place may in all cases of a declaration by the Privy Council include, with the field, stable, cow shed, or other premises in which cattle plague has been found to exist, such an area as to the Privy Council seems requisite; and the area of an infected place may in all cases of a declaration by a local authority include, with the field, stable, cow shed, or other premises in which cattle plague has been found to exist, all lands and buildings lying contiguous thereto being in the same occupation, and within the district of the local authority, and also (except in the Metropolis) an area comprised within one mile from the boundaries of those lands in every direction, but no more."

Extent of infected place under declaration of local authority.

Sec. 16. "A local authority may include in the area of an infected place any adjoining part of the district of another local authority, with the previous consent of that authority in writing signed by their clerk, but not otherwise."

Extension of area into district of other authority.

Sec. 17. "The area of an infected place may in any case be described by reference to a map deposited at some specified place, or by reference to townships, parishes, farms, or otherwise."

Description of infected place.

Sec. 18. "An order of a local authority declaring a place to be an infected place shall be published by the local authority by notices posted in and near the infected place, and in such other manner (if any) as they think expedient; and an order of the Privy Council declaring a place to be an infected place shall be published in like manner by and at the expense of any local authority to whom the same is sent by the Privy Council for publication; but any want of or defect or irregularity in publication shall not invalidate any order."

Notice of place being declared infected.

Sec. 19. "With respect to the metropolis the Privy Council may from time to time by order extend the limits of an infected place beyond the boundaries of the field, stable, cow shed, farm, or premises where cattle plague is declared or found to exist."

Area of infected places in metropolis.

4. *Discovery of Disease.*

Effect of orders of council.
Rules as to infected places.

Sect. 20. "An order of the Privy Council relative to an infected place shall supersede any order of a local authority inconsistent with it."

Sect. 21. "The following rules shall have effect with respect to infected places :

- (1.) No animal shall be moved alive out of an infected place :
- (2.) The hide, skin, hair, wool, horns, hoofs, or offal of any animal, or any part thereof, shall not be moved out of an infected place without a license signed by an officer of the local authority appointed to issue licenses in that behalf, certifying either that the thing moved has not formed part of an animal affected with cattle plague or of an animal that has been in the same shed or stable, or in the same herd or flock, or in contact with an animal so affected, or that it has been disinfected :
- (3.) The carcase of an animal, or a single portion of raw meat weighing more than twenty pounds, shall not be moved out of an infected place, without a license signed by an officer of the local authority appointed in that behalf, certifying that the carcase or meat moved is not the carcase or part of the carcase of an animal affected with cattle plague :
- (4.) Any dung of animals, and any hay, straw, litter, or other thing commonly used for food of animals or otherwise for or about animals, shall not be moved out of an infected place without a license signed by an officer of the local authority appointed in that behalf, certifying that the thing moved has not been in contact with or been used for or about any animal affected with cattle plague, or that it has been disinfected :

But with respect to the metropolis the Privy Council may from time to time by order vary the provisions of this section."

Offences as to infected places.

Sect. 22. "If any animal, hide, skin, hair, wool, horn, hoof, offal, carcase, meat, dung, hay, straw, litter, or other thing is moved in contravention of the rules of this Act with respect to infected places, every person moving the same, or causing the same to be moved shall be deemed guilty of an offence against this Act."

As to penalty under this section, see 30 & 31 Vict. c. 125, s. 55, *post*, p. 193.

Exception for railways.

Sect. 23. "The rules of this Act with respect to infected places shall not restrict the moving of any animal or thing by railway through an infected place, such animal or thing not being stopped within the infected place."

Power to make further rules as to infected places.

Sect. 24. "The Privy Council may from time to time by order make rules with respect to infected places not inconsistent with the rules of this Act, and rules so made shall be deemed rules of this Act with respect to infected places."

Duties of local authorities, &c.

Sect. 25. "It shall be the duty of every local authority and of the police of every county, borough, town, and place, within their respective districts to enforce and execute the provisions of this Act and of any order of the local authority or Privy Council thereunder relative to infected places, and to do or cause to be done all such things as are from time to time necessary or expedient for securing, as far as may be, the effectual isolation of infected places in respect of the movement of animals and things."

Authority of constable.

Sect. 26. "Any constable may proceed as follows :

- (1.) He may apprehend any person found committing an offence against the rules of this Act with respect to infected places, and he shall take any person so apprehended as soon as conveniently may be before a justice of the peace to be examined and dealt with according to law ; and a person so apprehended shall not be detained in custody by any constable without the order of a justice longer than is necessary for bringing him before a justice, or than twenty-four hours at longest ;
- (2.) He may require that any animal or thing moved out of an infected

place in contravention of those rules be forthwith taken back within the limits of that place, and may enforce and execute such requisition."

4. *Discovery of Disease.*

Sect. 27. "The local authority by whom an infected place is declared may at any time after the expiration of twenty-eight days from the disappearance of cattle plague in that place by order declare the place to be free from cattle plague, and the Privy Council may at any time by order declare any place to be free from cattle plague, and thereupon as from the time specified in this behalf in the order of the local authority or Privy Council the place shall cease to be an infected place."

Discontinuance of declaration of infected place.

Sect. 28. "The clerk of a local authority declaring a place to be an infected place, or declaring a place to be free from cattle plague, shall forthwith report by post to the Privy Council the fact of such declaration having been made."

Report to council.

Sect. 29. "Where, under this Act, an inspector makes a declaration which constitutes a place an infected place, he may also, if the circumstances of the case appear to him so to require, deliver a notice under his hand of such declaration to the occupiers of all lands and buildings adjoining thereto, any part whereof respectively lies within one mile of the boundaries of the infected place in any direction, and thereupon the rules of this Act with respect to infected places shall, until the determination and declaration of the local authority relative thereto in this Act provided for, apply and have effect to and in respect of those lands and buildings as if the same were actually within the limits of the infected place."

Restriction on movement, &c., near infected places.

Sect. 50. "The Privy Council may from time to time by order give directions respecting modes of disinfecting, and anything disinfected in accordance with the provisions of such order, or in accordance with any process of disinfection approved by the Privy Council, shall be deemed disinfected within this Act, but not otherwise."

Regulations for disinfecting.

(6.) CLEANSING OF PENS AND TRUCKS.

By 30 & 31 Vict. c. 125, s. 48, "It shall be the duty of every railway or other company and every person carrying animals for hire to thoroughly cleanse and disinfect, in such manner as the Privy Council from time to time by order direct, all pens, carriages, trucks, horse-boxes, vehicles, and boats used by such company or person for the carrying of animals.

Railway companies to disinfect carriages, boats, &c.

"If any company or person on any occasion fails to comply with the requisitions of any such order, such company or person shall on every such occasion be deemed guilty of an offence against this Act.

"Section Ten of 'The Cattle Diseases Prevention Act, 1866,' shall extend to authorize entry by any such person as therein described on premises where he has reasonable grounds for supposing that any such pen, carriage, truck, horse-box, vehicle, or boat is to be found, and that in respect thereof any company or person has on any occasion failed to comply with the requisitions of any such order."

Power to enter premises.

(7.) LOCAL RATES, AND RATES IN AID TO DEFRAY EXPENSES AND COMPENSATION.

By the 29 Vict. c. 2, s. 18, "All expenses incurred by a local authority in pursuance of this Act, including any compensation payable by it in respect of animals slaughtered in pursuance of this Act, shall be defrayed out of the local rate as defined by this Act, or out of a separate rate to

Expenses of local authority.

4. Discovery of Disease.

be levied in all respects in the same manner as the local rate, and included under the term 'local rate.'

"Any person who is not the owner of the premises in respect of which he is rated, under this section, to the local rate may deduct from the growing rent due to the owner of such premises one half of the rate payable by him for the purposes of this Act, and every owner shall allow such deduction accordingly.

"Owner,' for the purposes of this section, shall mean the person for the time being entitled to receive the rackrent of the premises in respect of which the rate is made on his own account, or who would be entitled to receive the same if such premises were let at a rackrent, including under the term 'rackrent' any rent which is not less than two-thirds of the net annual value of the premises out of which the rent issues.

"Every local authority shall have power, notwithstanding any limit in any Act of Parliament, to levy a local rate to the amount required for the purposes of this Act, but every rate or increase of rate levied under this section shall in all precepts for the levy thereof be described as a separate rate or separate item of rate, and when collected from the individual ratepayers it shall be collected as a separate rate or specified as a separate item of rate."

Expenses of local authority other than compensation.

By the 30 & 31 Vict. c. 125, s. 33, "Where the expenses incurred by a local authority in pursuance of this Act do not include any expenditure in compensation for animals slaughtered, the same shall be defrayed out of the local rate, as defined by 'The Cattle Diseases Prevention Act, 1866,' and not out of a separate rate; and in every such case the following provisions shall not extend and apply to the local rate: namely,

The provisions of section eighteen of 'The Cattle Diseases Prevention Act, 1866,' relative to the deduction of part of the rate by a person not the owner of premises:

The provisions of the same section relative to the describing, collecting, or specifying of the rate as a separate rate or separate item of rate:

The provisions of 'The Cattle Diseases Prevention Amendment Act, 1866.'

Expenses of local authority under orders of Council.

By 30 & 31 Vict. c. 125, s. 36, "Expenses incurred by a local authority in executing any order of the Privy Council between the passing of 'The Cattle Diseases Prevention Act, 1866,' and the date of the order of the Privy Council of the twenty-fourth day of March, one thousand eight hundred and sixty-six, shall be deemed to have been incurred in pursuance of the last mentioned Act; and the expenses incurred by a local authority in executing any order of the Privy Council made under this Act shall be defrayed as such order directs, and, subject to or in the absence of any such direction, shall be deemed expenses incurred in pursuance of this Act."

Half-yearly accounts of compensation.

Sect. 37. "Each local authority shall cause an account of their expenditure in compensation for animals slaughtered to be made up to Michaelmas and Lady-day in each year, commencing with the half-year ending Michaelmas one thousand eight hundred and sixty-seven, or to such other half-yearly days as the Poor Law Board from time to time direct."

As to application to Poor Law Board by local authority for audit.

Sect. 38. "Where from such half-yearly account of a local authority it appears that their expenditure in compensation in any half-year exceeds the rate of ninepence in the pound per annum on the annual rateable value of the property in the district, the local authority may apply to the Poor Law Board for an audit of their accounts for that half-year, and the Poor Law Board shall direct an audit accordingly."

Regulations respecting audit.

Sect. 39. "With respect to such audit the following rules shall have effect:

(1.) The auditor shall be appointed by the Poor Law Board:

(2.) The auditor shall receive such remuneration as the Poor Law

Board direct, and the same shall be paid by the local authority, and shall, with the expenses of or incident to the audit, be deemed part of the expenditure of the local authority in compensation :

- (3.) The audit shall be held at a place approved by the Poor Law Board and at the time fixed by the auditor, being as soon as may be after the application for the audit :
- (4.) The auditor shall, fourteen days at least before holding the audit, give notice of the time and place for the holding thereof by advertisement in a newspaper circulating in the district, and by a written notice delivered to or served on the clerk of the local authority :
- (5.) The clerk of the local authority shall attend the audit, and produce to the auditor all books, bills, vouchers, and documents, relating to the account :
- (6.) Any ratepayer in the district may be present at the audit, and may object to the account :
- (7.) The auditor shall, as nearly as may be, have the like powers, and be under the like obligation, to allow and disallow items in the account, as the auditor in the case of an audit under the authority of the Poor Law Board of the account of an overseer ; and there may be an appeal by any person aggrieved by the decision of the auditor in like manner, as nearly as may be, as in the case of such last mentioned audit :
- (8.) When the auditor has completed his audit, he shall sign the account, and shall also sign and deliver to the Poor Law Board and to the local authority a certificate of the amount allowed :
- (9.) Subject to the foregoing provisions, the Poor Law Board may from time to time make such regulations respecting the audit as they think fit."

4. *Discovery of Disease.*

Sect. 40. "If on any such audit it appears to the Poor Law Board from the certificate of the auditor that the expenditure of the local authority in compensation within the half-year of account has exceeded the rate of ninepence in the pound per annum on the annual rateable value of the property in the district of the local authority, the Poor Law Board shall make a general order directed to the several local authorities whose districts adjoin to the district of the local authority on whose behalf the order is made, and to the several local authorities whose districts are locally situate (wholly or partly) within the district of the local authority on whose behalf the order is made, or within such adjoining districts, and shall thereby require those several local authorities to contribute a sum of money to meet such excess of expenditure : Provided always, that no local authority shall be required to contribute any sum of money beyond an amount sufficient, together with any cattle rate raised in the district, to bring the charge for the year up to ninepence in the pound on the annual rateable value."

Power for poor law board to make order of contribution.

Sect. 41. "The sums to be so contributed by local authorities shall be assessed on them by the Poor Law Board in proportion to the annual rateable value of the property in their respective districts, to be determined according to the valuation lists, or, where there are none, on such other basis as the Poor Law Board from time to time direct."

Basis for contribution.

Sect. 42. "The sum to be so contributed by a local authority shall be a debt due from them to the local authority on whose behalf the order is made, and the order of the Poor Law Board shall be for all purposes conclusive evidence of the existence and amount of such debt."

Contribution to be a debt.

Sect. 43. "The money to be so contributed by a local authority shall be deemed expenditure in compensation for animals slaughtered, and shall be raised accordingly by the local rate or a separate rate, in manner provided by section eighteen of 'The Cattle Diseases Prevention Act, 1866.'"

As to raising of money for contribution.

Sect. 44. "The amount to be so contributed by a local authority shall, when raised, be paid to the treasurer or other proper officer of

Payment of money for contribution.

4. *Discovery of Disease.*

Provision against disputing of orders of Poor Law Board, &c.

Power to remit rate in certain cases.

Application of balance of voluntary rate.

Amount of insurance that may be recovered on slaughtered animals.

Mode of levying and recovering assessments in Scotland.

Assessment and collection of local rate in counties in Scotland.

As to the mortgage of rates in certain cases.

the local authority on whose behalf the order of the Poor Law Board is made."

Sect. 45. "An order of the Poor Law Board under this Act shall not be liable to be removed into a court of law by *certiorari* or otherwise, nor shall an order of a local authority, or a rate, made to carry into effect the provisions of this Act relative to contribution, be liable to question in a court of law on the ground of its having been made wholly or partly in furtherance of any such order of the Poor Law Board."

By 29 Vict. c. 2, s. 19. "Where, before the passing of this Act, any person has suffered so great a loss of cattle by cattle plague as to entitle him in the opinion of the local authority to a remission in whole or in part of any rate due from him for the purposes of this Act, such remission may be granted by the local authority.

"When within the district of any local authority any sum has been raised by a voluntary rate for the purpose of paying for cattle slaughtered with a view of preventing the spread of the cattle plague, the local authority may, with the consent of the managers of such voluntary rate, after satisfying itself that the rate or such portion of the rate as has been expended has been duly expended for the purpose aforesaid, and having received from such managers the balance of such rate, if any, apply it to the purposes of this Act, and in such case the sums proved to the satisfaction of such local authority to have been paid by any person to such voluntary rate, and to have been duly accounted for, shall be deducted from any rate payable by such person under the provisions of this Act."

Sect. 20. "Where any animal has been slaughtered under the provisions of this Act, the owner of such animal shall not be entitled to recover in respect of the insurance of such animal any sum which, together with the payment he receives for such animal under the provisions of this Act, shall exceed the sum which he would otherwise have been entitled to receive in respect of such insurance."

Sect. 21. "The local authority in counties in Scotland shall from time to time give notice to the commissioners of supply of the sums necessary to be provided under the provisions of this Act by means of the local rate, and the amount so intimated shall be assessed and collected by the commissioners of supply according to the real rent of lands and heritages as appearing on the valuation roll in force for the year, and pay over the same to the local authority, and the local authority in burghs in Scotland shall in like manner assess and collect the amount required to be raised by local rate within such burgh, and all such assessments shall be payable by the tenant, who shall be entitled to deduct one-half thereof from the rent payable by him to the proprietor, and all the provisions in regard to the recovery of assessments in the Act twentieth and twenty-first Victoria, chapter seventy-two, intituled 'An Act to render more effectual the Police in Counties and Burghs in Scotland,' shall be held to be incorporated in this Act in so far as not inconsistent with its provisions."

By 30 & 31 Vict. c. 125, s. 35, "The commissioners of supply of a county in Scotland may assess and collect the local rate mentioned in section twenty-one of 'The Cattle Diseases Prevention Act, 1866,' either on and from the tenants of lands and heritages as therein provided, or on and from the proprietors thereof (and that, notwithstanding anything in this Act, either with or without relief against the tenants for one-half of the assessment), according as it may be declared in the resolutions imposing the same, and with the like powers in regard to the recovery of assessments as are mentioned in that section."

By 29 Vict. c. 2, s. 22, "Whenever the rate levied or to be levied for the purposes of this Act exceeds the sum of sixpence in the pound, a local authority may, for the purposes of defraying any further costs, charges, and expenses under this Act, borrow and take up at interest,

on the credit of the local rate, any sums of money necessary for defraying such costs, charges, and expenses; and for the purpose of securing the re-payment of any sums of money so borrowed, together with such interest as aforesaid, the local authority may mortgage and assign over the said local rate for any period not exceeding seven years to the persons by or on behalf of whom such sums are advanced; and in any case where the rate levied or to be levied for meeting the charges of this Act shall exceed ninepence in the pound, the lords of the treasury may, upon application from the local authority, extend the term to any term not exceeding fourteen years, and the local authority may mortgage and assign over the said rate for any term not exceeding fourteen years accordingly."

Sect. 23. "The clauses of the 'Commissioners Clauses Act, 1847,' with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver. In the construction of those clauses the commissioners shall mean 'the Local Authority.'"

Sect. 24. "The public works loan commissioners, as defined by 'The Public Works Loan Act, 1853,' may, out of monies at their disposal, with the approval of the lords commissioners of the treasury, advance to any local authority, upon the security of the local rate, without any further security, to be re-paid, with interest, within any period as aforesaid, any sums of money to be applied by such authority in carrying into effect the purposes of this Act."

4. *Discovery of Disease.*

Certain clauses of 10 & 11 Vict. c. 16 incorporated.

Power to Public Works Loan Commissioners to lend money.

(8.) OTHER OFFENCES AND PENALTIES.

By 11 & 12 Vict. c. 107, s. 7, "That in case any person wilfully obstruct or impede any person acting under the authority of this Act or of any order or regulation made in pursuance of this Act, every person so offending, and all others aiding and assisting therein, shall and may be seized and detained by such person so acting under the authority of this Act as aforesaid, or any person or persons he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace having jurisdiction in the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him upon oath, to take cognizance thereof, and to act summarily in the premises), shall, in the discretion of such justice, forfeit any sum not exceeding five pounds, and in default of payment thereof shall and may be imprisoned for any term not exceeding two calendar months, unless the amount of the penalty shall have been sooner discharged."

Penalty for obstructing persons in the execution of this Act.

By 29 Vict. c. 15, s. 11, "Where any person having any cattle in his possession or keeping within the district of any local authority wherein the cattle plague exists, affixes at the entrance to any building or enclosed place in or on which such cattle are kept a notice forbidding persons to enter into or on that building or place without his permission, if any person not having a right of entry or way into, on, or over that building or place enters into, on, or over the same, or any part thereof, in contravention of the notice, he shall for every such offence be liable to a penalty not exceeding five pounds."

Power for person having cattle in his possession to prevent trespass on his land.

Sect. 5. "Penalties and forfeitures under the principal Act and this Act, or either of such Acts, or any order made thereunder, and expenses directed to be recovered in a summary manner, shall be recovered in England in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled 'An Act to facilitate the Per-

Penalties and forfeitures in England recoverable as under 11 & 12 Vict. c. 43.

4. *Discovery of Disease.*

formance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders,' or any Act amending the same.

"An appeal may be had from a decision of a justice or justices under this Act to the court of general or general quarter sessions in manner provided by the principal Act.

"One-half of all penalties and forfeitures recovered shall be paid to the person who sues or proceeds for the same, and the other half shall be applied in manner directed by the last-mentioned Act."

Penalties and forfeitures in Scotland recoverable as under 27 & 28 Vict. c. 53.

Parties aggrieved may appeal to quarter sessions on giving security.

Sect. 6. "Penalties and forfeitures under the principal Act and this Act, or either of such Acts, or any order made thereunder, shall, in Scotland, be recovered in manner directed by the 'Summary Procedure Act, 1864,' and the term 'Justice or Justices' shall include any magistrate having jurisdiction in Scotland under the said Act."

By 11 & 12 Vict. c. 107, s. 17, "That if any person shall think himself aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this Act, he may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon."

Court may make such order as they think reasonable.

Sect. 18. "That at the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable."

Penalty for disobedience of Act or order.

By 29 Vict. c. 2, s. 27, "If any person acts in contravention of any provisions in this Act contained, or any order made by a local authority in pursuance of this Act, he shall for each offence incur a penalty not exceeding twenty pounds, and where any such offence is committed with respect to more than four animals, a penalty not exceeding five pounds for each animal may be imposed instead of the penalty of twenty pounds."

Punishment for forgery of licenses, &c.

By 29 & 30 Vict. c. 110, s. 10, "If any person with intent to evade any of the provisions of the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and seven, or of the principal Act, or of any Act amending the said Acts, or of any order of the lords of her Majesty's council made thereunder respectively, forges or alters, or offers or utters knowing the same to be forged or altered, any license, instrument, or writing made or issued, or purporting to be made or issued, under any such Act or order, he shall for every such offence, on summary conviction thereof before two justices in the manner and subject to the appeal provided in the principal Act, be liable to a penalty not exceeding twenty pounds, or in the discretion of the justices to be imprisoned, with or without hard labour, for any term not exceeding three months."

Penalties on use of expired licenses, &c.

By 30 & 31 Vict. c. 125, s. 54, "If any person does any of the following things he shall be deemed guilty of an offence against this Act; that is to say,

(1.) If he does anything for which a license is requisite under any of

the former Acts or this Act, or any order of the Privy Council thereunder, without having obtained a license :

4. *Discovery of Disease.*

- (2.) If where such a license is requisite, having obtained a license in that behalf, he does the thing licensed after the license has expired :
- (3.) If he uses or offers or attempts to use as such a license an instrument not being a complete license, or an instrument untruly purporting or appearing to be a license, unless he shows to the satisfaction of the justices before whom he is charged that he did not know of such incompleteness or untruth, and that he could not with reasonable diligence have obtained such knowledge :
- (4.) If, with intent to evade any provision of any of the former Acts or of this Act or of any order of the Privy Council thereunder, he fabricates or alters, or offers or utters knowing the same to be fabricated or altered, any declaration or certificate made or issued or purporting to be made or issued under or for any purpose of any of the former Acts or this Act or any such order :
- (5.) If for the purpose of obtaining any license, certificate, or instrument under or for the purposes of any such provision he makes a declaration false in any material particular, unless he shows to the satisfaction of the justices before whom he is charged that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge :
- (6.) If he obtains or endeavours to obtain any such license, certificate, or instrument by means of any false pretence, unless he shows to the satisfaction of the justices before whom he is charged that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge :
- (7.) If he grants or issues any such license, certificate, or instrument, being false in any material particular, unless he shows to the satisfaction of the justices before whom he is charged that he did not know of such falsity, and that he could not with reasonable diligence have obtained such knowledge :

And the provisions of section ten of 'The Cattle Diseases Prevention Amendment Act, 1866,' respecting procedure and punishment, shall apply to every such offence."

Sect. 55. "If any person is guilty of an offence against this Act, or any orders of the Privy Council thereunder, not comprised in the last foregoing section, he shall for each such offence be liable to such penalty as is provided by section twenty-seven of 'The Cattle Diseases Prevention Act, 1866 ;' and where any such offence is committed in relation to offal, dung, hay, straw, litter, or other thing, a further penalty not exceeding ten pounds may be imposed in respect of every half ton in weight of such offal or other thing after the first half ton."

Penalties for offences not comprised in foregoing section.

Sect. 56. "For the purposes of proceedings under this Act, or any order of the Privy Council or order or regulation of a local authority thereunder, every offence against this Act or any such order or regulation shall be deemed to have been committed, and every cause of complaint under this Act or any such order or regulation shall be deemed to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the person charged or complained against happens to be."

Jurisdiction for trial of offences, &c.

By 29 Vict. c. 2, s. 28, "In the event of any person refusing or delaying to comply with the order of any local authority in Scotland, the local authority may give information thereof to the procurator fiscal of the county or burgh, who may apply to the sheriff for a warrant to carry out such order, and such warrant may be executed by the officers of court in the usual way."

Local authority in Scotland may apply to the Procurator Fiscal.

Sect. 29. "In Scotland all the judicial powers given to justices and quarter sessions, or to magistrates in boroughs by this Act, may also be exercised by the sheriff of the county or the sheriff-substitute."

Sheriff in Scotland to have concurrent jurisdiction.

4. *Discovery of Disease.*

Recovery of penalties.

Sect. 30. "Penalties under this Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled 'An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders,' or any Act amending the same, and in Scotland by summary complaint before the sheriff, sheriff-substitute, or two justices, or in boroughs before the magistrates, in manner provided by the 'Summary Procedure Act, 1864.'"

"Any railway company or other body corporate may appear before any justice, sheriff, or sheriff-substitute by any member of their board of management, or by any officer authorized in writing under the hand of any director or manager of the company."

Appeal.

Sect. 31. "If any party feels aggrieved by the dismissal of his complaint by the justices, or by any determination or adjudication of the justices with respect to any penalty or forfeiture under this Act, the party so dissatisfied may appeal therefrom, subject to the conditions and regulations following:—

1. The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the justices from which the appeal is made.
2. The appellant shall, within three days after the cause of appeal has arisen, give notice to the clerk of the petty sessional division for which the justices act whose decision is appealed from of his intention to appeal, and of the grounds thereof, and in Scotland to the clerk of the peace for the county.
3. The appellant shall immediately after such notice enter into a recognizance, before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court.
4. The court may adjourn the appeal, and may make such order thereon as they think just.

But nothing in the present section respecting appeal shall affect any enactments relative to appeals in cases of summary convictions or adjudications in the City of London or the Metropolitan Police District."

Confirmation of orders.

Sect. 32. "All orders made by the Lords of Her Majesty's Privy Council in pursuance of the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and seven, and all orders made and notices published by local authorities under the powers conferred on them by such orders of the Lords of Her Majesty's Privy Council, shall be deemed to have been duly made and authorized by the said Act, and shall, so far as they are consistent with this Act, remain in full force until they are revoked or have expired by lapse of time."

Expenses incurred prior to passing of Act.

Sect. 33. "All expenses already incurred by any local authority as defined by the said orders of the Lords of Her Majesty's Privy Council previous to the passing of this Act, in publishing any notices or advertisements in pursuance of or under any authority derived from any order of the Lords of Her Majesty's Privy Council made in pursuance of the said Act, shall be deemed to have been duly charged on any rate out of which such expenses have been defrayed; or such expenses may be paid in like manner as expenses incurred pursuant to this Act."

Continuance of Act.

Sect. 34. "This Act shall continue in force until the first day of June one thousand eight hundred and sixty-seven, and until the end of the then session of Parliament, and no longer, except in so far as respects the power of levying rates for re-paying any sums borrowed under the

provisions of this Act: Provided that it shall be lawful for Her Majesty in Council at any time to suspend the operation of this Act, as respects the slaughter of cattle."

4. *Discovery of Disease.*

(9.) PROTECTION OF PERSONS IN EXECUTION OF ACT.

By 30 & 31 Vict. c. 125, s. 57, "No action or proceeding shall lie against any person acting or intending to act under the authority or in the execution or in pursuance of this Act for any alleged irregularity or trespass or other act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding, and the name and residence of the intending plaintiff or prosecutor, and of his attorney or agent in the matter), is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within four months next after the act or thing complained of is done or omitted, or in case of a continuation of damage within four months next after the doing of such damage has ceased; and any such action shall be laid and tried in the county or place where the cause of action arose, and not elsewhere."

Actions against persons executing Act not to be brought without notice, &c.

Sect. 58. "In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him when acting or intending to act under the authority or in the execution or in pursuance of this Act, and may give all special matter in evidence."

Plea in action.

Sect. 59. "On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action not stated in his notice."

Evidence in action.

Sect. 60. "The plaintiff in any such action shall not succeed if tender of sufficient amends is made by the defendant before the commencement of the action; and in case no tender has been made the defendant may, by leave of the court in which the action is brought, at any time pay into the court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the court as may be had and made on the payment of money into court in an ordinary action."

Tender of amends, &c.

Sect. 61. "If in any such action the plaintiff does not succeed in obtaining judgment, the defendant shall receive such full and reasonable indemnity as to all costs, charges and expenses incurred in and about the action as may be taxed and allowed by the proper officer, subject to review; and though a verdict is given for the plaintiff in the action, he shall not have costs against the defendant unless the judge before whom the trial is had certifies his approval of the action and verdict."

Costs of defendant.

Sect. 62. "Where any such action or proceeding is defended under the direction or with the approval of the local authority, the costs, charges, and expenses incurred in and about the same by or on behalf of the defendant and payable by him, and any damages or other money recovered against or payable by him in or in consequence of such action or proceeding, shall be deemed expenses incurred by the local authority in pursuance of this Act, and shall be defrayed accordingly."

Costs, &c., of defence to actions, &c., under direction of local authority.

(10.) MISCELLANEOUS—TITLE AND INTERPRETATION OF ACTS.

By 29 Vict. c. 2, s. 2. "This Act shall not apply to Ireland."

Sect. 3. "'Person' shall include a body of persons corporate or unincorporate:

Application of Act.

Definition of certain terms: "Person."

4. *Discovery of Disease.*

"Cattle :"

"Animal :"

"Cattle plague :"

"Municipal borough :"

"County :"

"The Metropolis."

'Cattle' shall mean bull, cow, ox, heifer, or calf:

'Animal' shall mean cattle, as above defined, sheep, goats, and swine :

'Cattle plague' shall mean the rinderpest or disease commonly called the cattle plague

'Municipal borough' or 'borough' shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales, which is not assessed to the County Rate of any County by the Justices of such County :

'County' shall not include a county of a city or county of a town, but shall include any riding, division, or parts of a county having a separate commission of the peace :

The Liberty of St. Albans, and the Liberty of the Isle of Ely, and the Soke of Peterborough, shall respectively be deemed to be separate counties, but all other liberties and franchises of counties shall be considered as forming part of the county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary.

'The Metropolis' shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate :

Every place that is not, according to the foregoing definitions, a borough, a county, or a part of the metropolis, or is not separately mentioned in the schedule hereunto annexed, shall be deemed to form part of the county, as hereinbefore defined, to the county rate of which it is assessed, or, if not so assessed, of the county within which it is situate."

(11.) ACTS CONTINUED.

Continuance of Acts subject to partial repeal.

By 30 & 31 Vict. c. 125, s. 5, "Sections eleven and seventeen of 'The Cattle Diseases Prevention Act, 1866,' are hereby repealed as from the passing of this Act, and the residue of Part I. of that Act shall be deemed to be and to have always been in force at and before the passing of this Act, and, subject to such repeal, the former Acts, as far as they are in force at the passing of this Act, shall be and the same are hereby continued (subject to the provisions of this Act) until the expiration of one year after the passing of this Act and to the end of the then next session of Parliament ; but nothing herein (except the repeal aforesaid) shall be deemed to cause the discontinuance of any provision of any of the former Acts sooner than it would have ceased to operate if this Act had not been passed."

As to Acts to be construed together, see p. 178.

SCHEDULES.

THE FIRST SCHEDULE.

Former Acts continued.

11 & 12 Vict. c. 107.—An Act to prevent until the First Day of September. One thousand eight hundred and fifty, and to the End of the then Session of Parliament, the spreading of contagious or infectious Disorders among Sheep, Cattle, and other Animals. [The Contagious Diseases (Animals) Act, 1848.]

16 & 17 Vict. c. 62.—An Act to extend and continue an Act of the Twelfth

Year of Her present Majesty, to prevent the spreading of contagious or infectious Disorders among Sheep, Cattle, and other Animals. [The Contagious Diseases (Animals) Act, 1853.]

4. *Discovery of Disease.*

29 & 30 Vict. c. 2.—The Cattle Diseases Prevention, 1866.

29 & 30 Vict. c. 15.—An Act to amend the Act of the Eleventh and Twelfth Years of Her present Majesty, Chapter One hundred and seven, to prevent the spreading of contagious or infectious Disorders among Sheep, Cattle, and other Animals. [The Contagious Diseases (Animals) Act, 1866.]

29 & 30 Vict. c. 110.—The Cattle Diseases Prevention Amendment Act, 1866.

By 30 & 31 Vict. c. 125, s. 53, "The forms given in the second schedule to this Act, or forms to the like effect, may be used, and when used shall be deemed sufficient." Forms in second schedule.

THE SECOND SCHEDULE.

Forms for Use by Inspector respecting infected Places.

(1.) *Declaration of infected Place.*

The Contagious Diseases (Animals) Act, 1867.

I, A. B., of _____, the inspector appointed by _____, being the local authority for the [county] of _____, hereby declare that I have this day found cattle plague to exist in the following field, stable, cow shed, or other premises, (that is to say,) [*here describe the place where the disease is found.*]

Dated this _____ day of _____ 18 _____. (Signed) A. B.

(2.) *Notice of Declaration to Occupiers.*

The Contagious Diseases (Animals) Act, 1867.

To C. D., of _____,
I, A. B., of _____, the inspector appointed by _____, being the local authority for the [county] of _____, hereby give you notice, as the occupier of the following field, stable, cow shed, or other premises, (that is to say,) [*here describe the place where the disease is found.*] that I have made a declaration, a copy whereof is indorsed on this notice, [*copy of declaration as filled up and signed to be indorsed.*] and that in consequence thereof the field, stable, cow shed, or other premises aforesaid, with all lands and buildings contiguous thereto in your occupation, have become and are an infected place, and that the same will continue to be an infected place until the determination and declaration relative thereto of the local authority, as provided for in section _____ of the above-mentioned Act.

Dated this _____ day of _____ 18 _____. (Signed) A. B.

(3.) *Notice of Declaration to adjoining Occupiers*

The Contagious Diseases (Animals) Act, 1867.

To E. F., of _____,
I, A. B., of _____, the inspector appointed by _____, being the local authority for the [county] of _____, hereby give you notice that I have made a declaration, a copy whereof is indorsed on this notice, [*copy of declaration as filled up and signed to be indorsed.*] and that in consequence thereof the field, stable, cow shed, or other premises therein described, with all lands and buildings contiguous thereto in the same occupation, have become and are an infected place, and the same will continue to be an infected place until the determination and declaration relative thereto of the local authority, as provided for in section _____ of the above-mentioned Act. And I hereby

4. *Discovery of Disease.*

require you, as an occupier of lands and buildings adjoining to such infected place, part, [or the whole,] whereof lies within one mile of the boundaries of the infected place, to take notice that in consequence of the declaration aforesaid the rules of the said Act with respect to infected places will, until such determination and declaration of the local authority as aforesaid, apply and have effect to and in respect of the lands and buildings of which you are occupier as if the same were actually within the limits of the infected place.

Dated this day of , 18 .

(Signed) A. B.

V. As to Slaughtering Cattle and Animals.

[26 Geo. III. c. 71; 7 & 8 Vict. c. 87; 12 & 13 Vict. c. 92.]

1. *Slaughter-houses, licenses for*, 198.
2. *Inspectors*, 201.
3. *Offences—Penalties—Procedure to enforce*, 203.
4. *Appeal*, 207.
5. *Protection to Persons in execution of Act*, 207
6. *Interpretation*, 207.

(1.) SLAUGHTER-HOUSES, LICENSES FOR.

As to the power to slaughter diseased animals, or such as are suspected to be diseased, see "Contagious Diseases Prevention Acts," *ante*, p. 183.

Slaughter-houses are regulated in general by 26 Geo. III., c. 71, and are required to be licensed. This Act is amended by the 7 & 8 Vict. c. 87.

From July 20,
1786, every
person keeping a
slaughtering-
house, to take out
a license, &c.

By 26 Geo. III. c. 71, s. 1, "No person or persons shall keep or use any house or place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for butchers' meat, without first taking out a license for that purpose, at the general quarter sessions held for the county, riding, city, town, district, division or liberty wherein such slaughtering-house or place shall be situate; and the justices of the peace, at their general quarter sessions assembled are hereby authorised and empowered to grant such licenses as aforesaid, upon a certificate under the hands and seals of the minister and church-wardens, or overseers, or of the minister and two or more substantial householders of the parish wherein the person or persons applying for such license shall dwell, that such person or persons is or are fit and proper to be trusted with the management and carrying on such business as aforesaid: Provided always, that, in case of the death of any person to whom such license as aforesaid shall be granted, it shall and may be lawful for the widow or personal representative of such person so dying, to carry on the said business until the then next ensuing general quarter sessions of the peace."

New licenses to
be annual.

By 7 & 8 Vict. c. 87, s. 1, "Every license which shall, after the passing of this Act, be granted under or by virtue of the said Act of the twenty-sixth year of King George the Third, authorizing any person to keep or use any house or place for the purpose of slaughtering or killing any horse or other cattle (not killed for butchers' meat), shall be granted, and shall continue in force, for a period not exceeding one year from the date at which the same was granted, determinable as hereinafter provided: Provided nevertheless, that in the case of the renewal of any such license to any person to whom any such license may have been previously granted as aforesaid, it shall not be necessary for such person to obtain or produce to the justices at such general

quarter sessions of the peace a certificate under the hands and seals of the minister, churchwardens, overseers, or householders, as required by the said last-mentioned Act."

By 26 Geo. III. c. 71, s. 2, "Every such license shall be signed by the justices of the peace assembled at such general quarter sessions, or by the major part of them; and a copy of every such license shall be entered in a book to be kept for that purpose by the clerk of the peace of the county wherein the same shall be so granted as aforesaid; and that all and every person and persons shall have liberty at all times (Sundays excepted) between the hours of ten and twelve of the clock in the forenoon, to search the office of such clerk of the peace wherein any such copy shall be entered or kept, and to make an extract or extracts from the same, paying for every such search the sum of sixpence; and all and every person and persons so licensed as aforesaid, shall cause to be painted or affixed, over the door or gate of the house or place where he, she, or they shall carry on the said business, in large legible characters, his, her, and their name and names, with the words 'licensed for slaughtering horses, pursuant to an Act passed in the twenty-sixth year of His Majesty King George the Third.'"

By 12 & 13 Vict. c. 92, s. 7, "And whereas by an Act of Parliament passed in the twenty-sixth year of the reign of his late Majesty King George the Third, intituled 'An Act for Regulating Houses and other Places kept for the Purpose of Slaughtering Horses,' it is enacted, that every person and persons licensed according to the provisions of that Act shall cause to be painted or affixed over the door or gate of the house or place where he, she, or they shall carry on the business of slaughtering horses or other cattle, in large legible characters, his, her, and their name and names, together with the words 'Licensed for slaughtering horses, pursuant to an Act passed in the twenty-sixth year of his Majesty King George the Third.' And whereas no penalty is provided by the said recited Act for the refusal or neglect to comply with the said provisions: For remedy whereof be it enacted, that any person, licensed as aforesaid, who shall refuse or neglect to comply with the said recited provision of the said recited Act, shall forfeit and pay for such offence a penalty not exceeding five pounds, and shall forfeit and pay a like penalty for every day during which such refusal or neglect shall continue, such penalties to be recovered as penalties under this Act are directed to be recovered."

By sect. 11, "It shall not be lawful for any person who shall be licensed to slaughter horses, during the time while such license shall be in force, to be licensed as a horse-dealer, or exercise or use the trade or business of a dealer in horses, and if any person licensed to slaughter horses shall, while such license be in force, obtain a license as a horse-dealer, every such last mentioned license shall be void."

By 7 & 8 Vict. c. 87, s. 2, "It shall be lawful for the justices assembled at any general quarter sessions of the peace to be holden for any county, upon application and complaint made to them in writing by any person, and upon due proof being made to them that the party so complaining had given fourteen days previous notice in writing thereof to the clerk of the peace for such county, and also to the party complained against, and upon due proof to their satisfaction that any person so licensed as aforesaid has been guilty of any breach or violation of the said two several hereinbefore recited Acts or either of them, or of this Act, or any part or parts thereof respectively, to cancel and wholly put an end to any and every license which may have been granted to the person or persons so complained against, and from thenceforth the same shall be of no force or effect."

By 26 Geo. III. c. 71, s. 3, "Every occupier and occupiers of every such licensed slaughtering-house or place shall, six hours previous to

5. Slaughtering Cattle.

Justices to grant licenses, which are to be entered, &c.

Persons licensed to affix to their houses the words herein mentioned.

Penalty on licensed persons not affixing their names on door.

License not to be granted to a horse-dealer.

Justices in quarter sessions may cancel licenses.

Previous notice to be sent when horses, &c., are

5. *Slaughtering Cattle.*

intended to be slaughtered, to the inspector, who is to take an account of the beasts.

Times of slaughtering, &c.

Account to be kept, by the owners of slaughtering houses, of the owners of the cattle brought, &c.

Entry of description of horse, &c., to be made in a book.

Penalty for not producing book.

the slaughtering or killing of any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for the purpose of butchers' meat, and previous to the flaying any such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, brought dead to such slaughtering house or other place, give notice in writing to a person to be appointed in manner hereinafter mentioned, as inspector, to the intent that such inspector may, upon such notice as aforesaid, and before any such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, shall be slaughtered, killed, or flayed, take an exact account and description of the height, age (as near as may be), colour, and particular marks of every horse, mare, gelding, foal or filly, ass or mule, brought alive for the purpose of being slaughtered or killed, or brought dead as aforesaid, and of the colour and particular marks of every cow, bull, heifer, ox, calf, sheep, hog, goat, or other cattle, brought alive or dead for either of the purposes aforesaid; and no such horse, mare, gelding, foal or filly, ass, mule, ox, bull, cow, or heifer, calf, sheep, hog, goat, or other cattle, shall be slaughtered, killed, or flayed, but between the hours of eight of the clock in the morning and four of the clock in the evening, during the months of October, November, December, January, February, and March; and between the hours of six of the clock in the morning and eight of the clock in the evening, during the months of April, May, June, July, August, and September, in every year."

By sect. 4, "Every person so licensed as aforesaid shall, at the time any horse, mare, ox, gelding, colt, filly, ass, or mule, or any ox, bull, cow, heifer, calf, sheep, hog, goat, or any other cattle, shall be brought for the purpose of slaughtering, killing, or flaying, make, or cause to be made, an entry in a book, to be kept for that purpose, in a fair legible hand, of the name and names, place and places of abode, profession and professions of the owner or owners thereof, and also of the person and persons who shall bring the same to be slaughtered, killed, or flayed, and the reason or reasons why the same is brought to be slaughtered, killed, or flayed, which reason and reasons, the person or persons bringing the same is and are hereby required to declare to such person or persons so licensed as aforesaid; which book shall at all times be open for the perusal and examination of the inspector and inspectors to be appointed under this Act; and all and every such licensed person and persons shall at all times attend with, and produce such book before any one justice of the peace for the county, city, liberty, or place where such licensed slaughtering-house or place shall be situate, when required by warrant or order under the hand and seal of such justice of the peace so to do, and shall likewise produce the same at every general quarter sessions of the peace which shall be held in and for the said county."

By 12 & 13 Vict. c. 92, s. 10, "Every person keeping or using, or having the management of any place for the purpose of slaughtering horses, or other cattle (not intended for butchers' meat), shall, at the time of receiving any horse or other cattle in such place, enter in a book such a full and correct description of the colour, marks, and gender of such horse or other cattle as may clearly distinguish and identify the same; and if any such person shall refuse or neglect to produce such book before any justice of the peace whenever required by such justice so to do, or shall refuse to allow such book to be inspected, and extracts to be made therefrom, at all reasonable times, by any constable, or other person duly authorised by such justice, every such person shall be liable to forfeit and pay a penalty for every such offence not exceeding forty shillings."

(2.) INSPECTORS.

By 26 Geo. III. c. 71, s. 5, "Such of the parishioners, as by law are entitled to meet in vestry for the purpose of choosing parish officers, shall, in every parish wherein any such slaughtering-house or place shall be situated, annually, or oftener, as occasion may require, appoint one or more proper person or persons to be an inspector or inspectors to inspect every such slaughtering house and place as aforesaid, to whom all and every occupier and occupiers, person and persons, carrying on such business as aforesaid, shall, six hours previous to his, her, or their slaughtering, killing, or flaying any such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, give notice in writing of his, her, or their intention so to do; and such inspector or inspectors shall in person, or by his or their servant or servants, attend at the slaughtering-house or place of the person or persons so giving such notice, and there take such account and description as hereinbefore directed; and every such inspector shall and is hereby required to keep a book or books, and therein to make an entry of every such account and description; and every such occupier or person carrying on such business as aforesaid shall, for every such entry, pay to such inspector sixpence; and all and every person and persons desiring to inspect such book or books shall have access to the same at all times, between the hours of eight of the clock in the morning and five in the evening, during the months of October, November, December, January, February, and March, and between the hours of six of the clock in the morning and eight in the evening, during the months of April, May, June, July, August, and September, in every year, paying to such inspector, for every such search, the sum of sixpence, and no more; and every such inspector, so appointed as aforesaid, shall cause to be painted or affixed over the door of the house where he resides, his name, and the words, 'inspector of houses and places for slaughtering horses;' and in case such inspector or inspectors shall, upon examination of any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, intended to be slaughtered or killed, have reason to believe, or be of opinion, that such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, is or are free from disease, and in a sound and serviceable state, or that the same has been stolen, or unlawfully come by, he or they shall have power, and is and are hereby authorized and required to prohibit the slaughtering or killing of any such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, for any time not exceeding the space of eight days; and in the meantime shall and is and are hereby directed and required to cause an advertisement or advertisements to be inserted in the *Daily Advertiser*, or some public newspaper circulated in the county where such slaughter-house or place shall be situated, twice or oftener, unless the owner or owners of such horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, shall sooner claim the same, to certify under his, her, or their hand or hands to, or otherwise satisfactorily inform the said inspector or inspectors, that he, she, or they sent or delivered, or caused the said horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other such cattle, to be delivered to the said person or persons so licensed for the purpose of being slaughtered or killed, the expense of inserting such advertisement or advertisements, as aforesaid, to be paid by the occupier or occupiers of such slaughtering-house or place to such inspector or inspectors; and in case such occupier or occupiers of such slaughtering-house or place shall refuse to defray or pay the same, and shall be thereof convicted on the oath of any such inspector as aforesaid before any one justice of the peace for the county or district wherein such slaughtering-house or

5. Slaughtering Cattle.

Vestry to appoint inspectors.

Inspectors' duty.

5. *Slaughtering Cattle.*

Form of conviction for refusing to pay for advertisements of the inspectors.

place shall be situated, he, she, or they, shall forfeit double the amount of the charge of such advertisement or advertisements, to be raised by distress and sale of the goods and chattels of such offender or offenders, by warrant under the hand and seal of any such justice as aforesaid; and the form of such conviction shall be as follows:

‘*A. B.* is convicted, on the oath of *C. D.*, inspector of houses and places for slaughtering horses for the parish of *E.*, in the county of *D.*, of refusing to pay the sum of _____, being the expense of an advertisement or advertisements [as the case may be] inserted in the *Daily Advertiser*, or some other public newspaper circulated in the county, [as the case may be,] pursuant to the directions of the statute in that case made and provided.

‘Given under my hand and seal, this _____ day of _____

‘*F. G.*’

Inspectors may visit slaughtering houses at all times.

By sect. 6, “It shall and may be lawful to and for every inspector so appointed as aforesaid, at all times, in the day or night, but if in the night, then in the presence of a constable, to go to, enter into, and inspect, any house or place kept for slaughtering or killing horses by any person or persons licensed as aforesaid; and also any stable, building, shed, yard, or place belonging thereto, and then and there to examine, search for, and see if any horse, mare, gelding, foal, filly, ass, or mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, is or are deposited or have been brought there, and to take an account thereof; and all and every person and persons, so licensed as aforesaid, having, keeping, or using any such house or place for slaughtering horses, shall, and is and are hereby directed and required to permit and suffer any such inspector as aforesaid, at all times in the day and night, but if in the night, then in the presence of a constable, to enter into and inspect such house or place, and also any stable, building, shed, yard, or premises belonging thereto, and freely to examine, search for, and see, any horse, mare, gelding, foal, filly, ass, or mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, then and there being, and to take such account as hereinbefore directed.”

Power for constables to enter licensed places.

By the 7 & 8 Vict. c. 87, s. 4, “It shall be lawful for any constable from time to time, and as often as he shall think fit, at all reasonable times in the day-time, by authority of this Act, either alone or accompanied by any inspector appointed or to be appointed under the first-recited Act, to enter upon and view and inspect all and every the houses, stables, sheds, yards, grounds, and premises for the keeping of which any such license shall have been granted as aforesaid, and also to inspect or take an account of all or any of the horses or other cattle which shall from time to time be found upon such premises or any part thereof.”

Penalty for obstructing inspectors.

By sect. 5, “In case any person to whom any such license shall be granted as aforesaid, or any other person, shall at any time or in any manner obstruct, hinder, molest, or assault any such inspector whilst in the discharge of his duty, or the exercise of his power or authority under or by virtue of the said first-recited Act or of this Act, every such offender shall for every such offence, on conviction thereof, forfeit and pay such a sum of money, not exceeding ten pounds, as any two or more justices before whom such offender shall be brought shall deem fit.”

Penalty for inspector neglecting his duty.

By sect. 6, “In case any such inspector shall at any time be guilty of any neglect or violation of the duty required of him by law, then and in every such case such inspector shall, upon conviction, forfeit and pay for every such offence a sum of money not exceeding ten pounds.”

See also 26 & 27 Vict. c. 117, s. 3, *ante*, 177.

Persons bringing cattle refusing to give an account of themselves.

By 26 Geo. III. c. 71, s. 7, “In case any person or persons who shall offer to sale, or shall bring any horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle,

to any person or persons keeping such slaughtering-house or place as aforesaid, to be slaughtered or killed, or being dead, to be flayed or skinned, shall not be able, or shall refuse to give a satisfactory account of himself, herself, or themselves, or of the means by which the same came into his, her, or their possession ; or if there shall be any reason to suspect that such horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, is or are stolen, or otherwise unlawfully obtained, it shall and may be lawful for the person or persons keeping such slaughtering-house or place as aforesaid, to whom the same shall be brought or offered to sale, and for his, her, or their servants, agents or assistants, and also for the said inspector or inspectors, or his or their servant or servants as aforesaid, to seize and detain such person or persons ; and also every such horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, so brought or offered to sale as aforesaid, and to deliver such person or persons, as soon as conveniently may be, into the custody of a constable or other peace officer, who shall, and is hereby required immediately to convey such person or persons before a justice of the peace for the county, riding, division, city, liberty, or place, where the offence shall be committed ; and if such justice shall, upon examination and enquiry, have cause to suspect that such horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, is or are stolen or unlawfully obtained, it shall and may be lawful for such justice to commit such person or persons into safe custody, for any time not exceeding the space of six days, in order to be further examined ; and if upon either of the said examinations, such justice shall be satisfied, or have reason to believe, that such horse, mare, gelding, foal, filly, ass, mule, bull, cow, ox, heifer, calf, sheep, hog, goat, or other cattle, is or are stolen, or illegally obtained, the said justice is hereby authorised and required to commit the person or persons, so bringing or offering the same to sale, to the common gaol or house of correction of the county, riding, division, city, liberty, or place, wherein the offence shall be committed, there to be dealt with according to law."

5. Slaughtering Cattle.

&c., may be carried before a justice.

Justices may commit suspected persons.

(3.) OTHER OFFENCES—PENALTIES.

By 26 Geo. III. c. 71, s. 8, "If any person or persons, keeping or using any such slaughtering-house or place as aforesaid, shall, at any time from and after the twentieth day of July, One thousand seven hundred and eighty-six, slaughter any horse, mare, or gelding, foal or filly, ass or mule, or any bull, cow, heifer, ox, calf, sheep, hog, goat, or other cattle, for any other purpose than for butchers' meat, or shall flay any horse, mare, gelding, foal, filly, ass, mule, bull, cow, heifer, ox, calf, sheep, hog, goat, or other cattle, brought dead to such slaughtering-house or other place, without taking out such license, or without giving such notice as aforesaid, or shall slaughter, kill, or flay the same, at any time or times other than and except within the hours hereinbefore limited, or shall not delay slaughtering or killing the same, according to the direction of such inspector so authorized to prohibit the same as aforesaid, such person or persons so offending in either of the said cases, being thereof convicted, shall be adjudged, deemed, and taken to be guilty of felony, and shall be punished by fine and imprisonment, and such corporal punishment, by public or private whipping, or shall be transported beyond the seas for any time not exceeding seven years, as the court, before whom such offender or offenders shall be tried and convicted, shall direct."

Persons slaughtering horses, &c., without license, &c., guilty of felony.

By sect. 9, "Whereas divers ill disposed persons, keeping such

Persons destroying hides.

By sect. 12, "The book and books of all and every the inspector and inspectors of every parish wherein any such slaughtering-house or place shall stand or be situated, shall be produced at every general quarter sessions of the peace to be holden in and for the county wherein any such license shall be granted, and delivered to the

justices of the peace at such general quarter sessions assembled, then and there to be examined by them as they shall think fit."

By sect. 13, "If any person or persons shall occasionally lend any house, barn, stable, or other place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for butchers' meat, without taking out such license as aforesaid, and shall be thereof convicted before any justice of the peace for the county, riding, city, town, district, division, or liberty, wherein such person or persons shall reside, upon the oath of two credible witnesses, he, she, or they shall forfeit, upon conviction for every such offence, any sum not exceeding twenty pounds, nor less than ten pounds, one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where the offence shall be committed, and which said last-mentioned moiety shall, upon payment thereof, be immediately transmitted by the justice so convicting to the overseers of the poor of the said parish, or one of them; and in case such penalty shall not be forthwith paid, such justice shall commit the offender to the common goal or house of correction, there to remain without bail or mainprize for any time not exceeding three calendar months, nor less than one calendar month, unless the said penalty shall be sooner paid; and the form of such conviction shall be as follows, or to the like effect:

'BE it remembered, that, on this _____ day of _____, A. B. was convicted, upon the oaths of two credible witnesses, before me, C. D., one of His Majesty's justices of the peace for the county of _____, for occasionally lending a house [or place, *as the case may be*], for the purpose of slaughtering horses, [or, *as the case may be*, of slaughtering cattle for other purposes than for butchers' meat], without a license for that purpose first obtained, according to the statute in that case made and provided.

'Given under my hand and seal, the day and year above written.'

By 7 & 8 Vict. c. 87, s. 3, "If any such licensed or other person shall wantonly or cruelly beat, ill-treat, abuse, wound, or torture any horse or other cattle in any house, pound, stable, or other place in the occupation or use of such licensed person, every such person shall for every such offence, on conviction thereof, forfeit and pay a sum of money not exceeding five pounds."

By 12 & 13 Vict. c. 92, s. 8, "Every person keeping or using or acting in the management of any place for the purpose of slaughtering horses or other cattle (not intended for butchers' meat), shall immediately, upon any horse or other cattle being brought to or delivered at such place for the purpose of being slaughtered, cut off or cause to be cut off the hair from the neck of such horse or other cattle, and within three days from the time of such horse or other cattle being brought or delivered as aforesaid, shall kill or cause to be killed the said horse or other cattle, and, until such horse or other cattle shall be killed, shall supply such horse or other cattle with a sufficient quantity of fit and wholesome food and water; and if any person keeping or using or acting in the management of any such place shall neglect or omit to cut or cause to be cut off the hair of the neck of such horse or other cattle, or to kill or cause to be killed any such horse or other cattle within the time above limited, or shall neglect or omit to supply a sufficient quantity of fit and wholesome food and water to such horse or other cattle as aforesaid, every such person shall, on conviction of any or either of the said offences, be liable to a penalty not exceeding five pounds."

By sect. 9, "If any person keeping or using or having the management of any place for the purpose of slaughtering horses or other cattle (not intended for butchers' meat) shall use or employ, or cause or permit to be used or employed, any horse or other cattle brought to or

5. Slaughtering Cattle.

Penalty on persons lending houses for the purpose of slaughtering.

Form of conviction when the said penalty is not paid.

Persons wantonly or cruelly ill-treating any horse to be liable to penalty.

Horses, &c., to be marked on being brought to a slaughter-house, and to be killed within three days, and supplied with food in mean time.

No cattle, &c., brought to be slaughtered are to be used or worked.

5. Slaughtering Cattle.

delivered at, or which shall be in or upon, such place for the purpose of being slaughtered, or shall permit or suffer any such horse or other cattle to leave the said place, to be employed in any manner of work, every such person shall be liable to forfeit and pay a penalty not exceeding forty shillings for every day on which such horse or other cattle shall be so used or employed, or shall be absent from such place; and every person who shall be found using or employing any such horse or other cattle, or in the possession of any such horse or other cattle whilst so used or employed, shall be liable to forfeit and pay a penalty not exceeding forty shillings for every day he shall use or employ or be so possessed of any such horse or other cattle aforesaid."

Act not to extend to curriers, &c., killing distempered horses, &c.

By 26 Geo. III. c. 71, s. 14, "Provided always, that this Act shall not extend to any currier, felt maker, tanner, or dealer in hides, who shall kill any distempered or aged horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, or purchase any dead horse, mare, gelding, colt, filly, ass, mule, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, for the *bonâ fide* purpose of selling, using, or curing the hide or hides thereof in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle, nor to any person or persons who shall kill any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle of their own, or purchasing any dead horse or other cattle, to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose."

Collar makers, &c., killing sound horses, &c., liable to penalty.

By sect. 15, "If any collar maker, currier, felt maker, tanner, or dealer in hides, or farrier, or other person shall, under colour of their respective trades or occupations, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof for the purpose of selling the same, such collar maker and other tradesman or person shall be deemed and taken to be an offender within the meaning of this Act, and shall, for every such offence, forfeit any sum not exceeding twenty pounds, nor less than ten pounds."

Offences may be heard by two justices.

Penalties, how to be recovered and applied.

By 7 & 8 Vict. c. 87, s. 7, "All offences against this Act, or any of the provisions thereof, shall and may be heard and determined before and by any two or more justices of the peace for the county within which the offence shall have been committed; and all penalties and forfeitures incurred thereby respectively shall and may be recoverable, with costs before and awarded by any such justices, and shall be applied as follows: namely, such part as the justices shall think fit to the person who shall inform and prosecute for the same, and the remainder thereof to the sheriff or other proper officer of the county in which such conviction shall take place for her Majesty's use, and shall be returned to the court of quarter sessions, under the provisions of an Act passed in the third year of his late Majesty King George the Fourth, intitled 'An Act for the more speedy return and levying of Fines, Penalties, and Forfeitures and Recognizances estreated;' and in case of non-payment of any such penalty or forfeiture respectively, it shall and may be lawful for justices forthwith to commit the offender to the common goal or prison within the jurisdiction of such justices for any time not exceeding one calendar month, as to such justices shall seem meet."

Limitation as to summary proceedings.

By sect. 8, "The prosecution of every offence punishable under this Act shall be commenced within three calendar months next after the commission of the offence, and not otherwise; and the evidence of the party complaining shall be admitted in proof of the offence."

Witnesses refusing to attend the justices to forfeit 10*l*.

By the 26 Geo. III. c. 71, s. 16, "It shall and may be lawful for any justice of the peace before whom complaint shall be made for any offence against this Act, to summon such person or persons, other than the party or parties complained against, as he shall think pro-

per, to appear before him at a day certain, then and there to give evidence touching any offence committed against this Act; and in case such person or persons shall wilfully refuse or neglect to attend, or give evidence touching such offence, he, she, or they shall forfeit the sum of ten pounds, and in default of payment thereof, or in case of inability to pay the same, shall stand committed to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one calendar month, unless the said penalty shall be sooner paid."

5. *Slaughtering Cattle.*

(4.) APPEAL.

By 7 & 8 Vict. c. 87, s. 9, "Any person who shall think himself aggrieved by any summary order or conviction made by any justice or justices of the peace under the authority of this Act may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county wherein the cause of complaint shall have arisen, provided that such person at the time of the order or conviction, [or within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled, and to pay such costs as shall be by the last-mentioned justices awarded; and it shall be lawful for the justice or justices of the peace by whom such order or conviction shall have been made to bind over the witnesses who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal, and that every such witness, on producing a certificate of his being so bound under the hand of the justice or justices, shall be allowed compensation for his time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county, in like manner as in cases of misdemeanour, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled 'An Act for improving the Administration of Criminal Justice in England; and in case the appeal shall be dismissed, and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be re-paid to the treasurer of the county by appellant."

Appeal to quarter sessions.

7 Geo. IV. c. 64.

(5.) PROTECTION TO PERSONS ACTING UNDER THIS ACT.

By 26 Geo. III. c. 71, s. 18, "If any person or persons shall, at any time or times, be sued, molested, or prosecuted for any thing by him, her, or them done or executed in pursuance of this Act, or of any clause, matter, or thing herein contained, such person or persons may plead the general issue, and give the special matter in evidence for his, her, or their defence; and if upon the trial a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become nonsuited, then such defendant or defendants shall have treble costs awarded to him, her, or them, against such plaintiff or plaintiffs."

General issue.

Treble costs.

(6.) INTERPRETATION.

By the 7 & 8 Vict. c. 87, s. 10, "The words hereinafter mentioned, which in their usual signification have a more restricted or different meaning, shall in this Act (except where the nature of the provisions or the context of the Act shall exclude such construction)

Meaning of certain words used in this Act.

5. Slaughtering Cattle.

be interpreted as follows: that is to say, the word 'county' shall include city, town, borough, cinque port, riding, liberty, or division; the word 'horse' shall include mare, gelding, mule, pony, colt, or filly; the word 'cattle' shall include bull, ox, cow, steer, heifer, calf, ass, sheep, lamb, goat, pig, or any other domestic animal; the word 'constable' shall include headborough, peace officer, or police officer; and every word importing the singular number only shall extend and be applied to several persons and things as well as to one person or thing; and every word importing the masculine gender only shall extend to a female as well as a male."

VI. Cruelty to.

[12 & 13 Vict. c. 92; 17 & 18 Vict. c. 60.]

Repeal of 5 & 6 Will. IV. c. 59, and 7 Will. IV. & 1 Vict. c. 66.

As to cattle, &c., about to be slaughtered, see *ante*, p. 198 *et seq.*
By 12 & 13 Vict. c. 92, intituled "An Act for the more effectual Prevention of Cruelty to Animals," it is enacted in sect. 1, after reciting 5 & 6 Will. IV. c. 59, and 1 Vict. c. 66, that the said Acts are repealed, excepting so far as they repeal any other Act, and as to offences committed before this Act.

Animals.

The interpretation clause (s. 29) enacts, that the word "animal" shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal.

By 17 & 18 Vict. c. 60, s. 3, "The words and expressions to which a meaning is affixed by the 12 & 13 Vict. c. 92, and which are introduced into this Act, shall have the same meaning in this Act, and the word *animal* shall in the said Act and in this Act, mean any domestic animal whether of the kind or species particularly enumerated in clause 29 of the said Act, or of any other kind or species whatever, and whether a quadruped or not."

Penalty for cruelty to animals.

By 12 & 13 Vict. c. 92, s. 2, "If any person shall from and after the passing of this Act, cruelly beat, ill-treat, over-drive, abuse or torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured, any animal, every such offender shall for every such offence forfeit and pay a penalty not exceeding five pounds" (a).

A cock is an animal within the meaning of sects. 2 and 29, and a person who sets a cock armed with steel spurs to fight another cock, and did so after the latter cock had been disabled, and continued to do so until it was killed, or appeared to be dead, was held to be rightly convicted of causing the cock in question to be ill-treated, abused and tortured within the second section. (*Budge v. Parsons*, 3 B. & S. 379; 32 L. J. M. C. 95; *Bates v. M'Cormick*, 9 L. T. N. S. 175). The 17 & 18 Vict. c. 60, s. 3, seems to have been overlooked in those cases.

As to places kept for bull-baiting, dog-fighting, &c.

Sect. 3. "That every person who shall keep or use or act in the management of any place for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, or shall permit or suffer any place to be so used, shall be liable to a penalty not exceeding five pounds for every day he shall so keep or use or act in the management of any such place, or permit or suffer any place to be used as aforesaid; provided always that every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof; and every person who shall in any manner encourage, aid, or assist at the fighting or baiting

(a) In the 5 & 6 Will. IV. c. 59, s. 2, the word "wantonly" was used.

of any bull, bear, badger, dog, cock, or other animal as aforesaid shall forfeit and pay a penalty not exceeding five pounds for every such offence."

6. Cruelty to.

The offence against the latter part of this section is the encouraging, aiding or assisting at the fighting of cocks, &c., in a place used for the purpose of fighting cocks, &c., as described in the former part of the section, therefore a conviction was held wrong under the latter part of the section, where it was simply proved that the cock-fight took place in a bowling alley without any evidence that in any other instance cocks had been fought there; (*Clarke v. Hague*, 2 E. & E. 281; 29 L. J. M. C. 105); and this case has been followed in the Irish Court of Common Pleas, where the proof was that the cock fight took place in lands where one hundred persons were present, but that no cock-fight had been known to take place there before; (*Coyne v. Brady*, 12 Ir. C. L. 57;) and again subsequently here in *Morley v. Greenhalgh*, 3 B. & S. 374; 32 L. J. Q. B. 93.

Sect. 4. "If any person shall, by cruelly beating, ill-treating, over-driving, abusing or torturing any animal, do any damage or injury to such animal, or shall thereby cause any damage or injury to be done to any person or to any property, every such offender shall on conviction of such offence pay to the owner of such animal (if the offender shall not be the owner thereof), or to the person who shall sustain damage or injury as aforesaid, such sum of money by way of compensation, not exceeding the sum of ten pounds, as shall be ascertained and determined by the justice of the peace by whom such person shall have been convicted: provided always, that the payment of such compensation, or any imprisonment for the non-payment thereof, shall not prevent or in any manner affect the punishment to which such person or the owner of such animal may be liable for or in respect of the beating, ill-treating or abusing of the said animal: provided also, that nothing herein contained shall prevent any proceeding by action against such offender, or the employer of such offender, where the amount of damage or injury is not sought to be recovered under this Act."

As to damage done by persons guilty of cruelty to animals.

Sect. 5. "Every person who shall impound or confine, or cause to be impounded or confined (a), in any pound or receptacle of the like nature, any animal, shall provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal; and every such person who shall refuse or neglect to provide and supply such animal with such food and water as aforesaid shall for every such offence forfeit and pay a penalty of twenty shillings."

Persons impounding animals to provide food and water.

Sect. 6. "In case any animal shall at any time be impounded or confined as aforesaid, and shall continue confined without fit and sufficient food and water for more than twelve successive hours, it shall and may be lawful to and for any person whomsoever, from time to time, and as often as shall be necessary, to enter into and upon any pound or other receptacle of the like nature in which any such animal shall be so confined, and to supply such animal with fit and sufficient food and water during so long a time as such animal shall remain and continue confined as aforesaid, without being liable to any action of trespass or other proceeding by any person whomsoever for or by reason of such entry for the purposes aforesaid; and the reasonable cost of such food and water shall be paid by the owner of such animal, before such animal is removed, to the person who shall supply the same, and the said cost may be recovered in like manner as herein provided for the recovery of penalties under this Act."

Power to supply food and water to animals impounded.

By the 17 & 18 Vict. c. 60, s. 1, "Every person who, since the passing of the said Act of the 12 & 13 Vict. c. 92, shall impound or confine, as

Persons impounding animals may recover the expenses of their food and water.

(a) That is, by a party having a right to distrain, or at least some

colour for it. (See *Marshall v. Ellis*, 1 C. & K. 682.)

6. Cruelty to.

in the said Act mentioned, any animal, and provide and supply such animal with food and water as therein mentioned, shall and may and he is hereby authorised to recover of and from the owner or owners of such animal, not exceeding double the value of the food and water so to be supplied to such animal in like manner as is by the said last mentioned Act provided for the recovery of penalties under the same Act; and every person who shall supply such food and water shall be at liberty, if he shall so think fit, instead of proceeding for the value or recovery thereof as last aforesaid, after the expiration of seven clear days from the time of impounding the same, to sell any such animal openly at any public market (after having given three days public printed notice thereof) for the most money that can be got for the same, and to apply the produce in discharge of the value of such food and water so supplied as aforesaid and the expenses of and attending such sale, rendering the overplus (if any) to the owner of such animal."

If, under this section, several animals are impounded, the person impounding can only justify the sale of so many as is necessary to recoup himself the costs and expenses he may have incurred under that section. (*Layton v. Hurry*, 8 Q. B. 811; 15 L. J. Q. B. 266, decided on 5 & 6 Will. IV. c. 59.)

It seems that the person who is bound to supply food to impounded cattle is the distrainer or person at whose suit they are impounded and not the pound-keeper, but if the pound-keeper supplies the food at the request of the distrainer, or the distrainer joins with the pound-keeper in a subsequent sale of the cattle under this Act, the pound-keeper and the distrainer are for this purpose to be considered as one. (*Mason v. Newland*, 7 Car. & P. 575.) The distrainer who supplies the food may either apply to a magistrate to allow any sum not exceeding double the value of the food, or may sell the cattle; but no magistrate ought to allow more than the actual value of the food if the owner of the cattle was willing to supply the food himself. (*Ib.*) If the cattle be sold under the Act, the distrainer can only get the single value of the food and not the amount of the damage for which the cattle were distrained, as all the overplus beyond the value of the food and the expenses of the sale, is to be returned to the owner of the capital. (*Ib.*)

As to dogs used for draught.

By the 17 & 18 Vict. c. 60, s. 2, "Any person who shall on any public highway in any part of the United Kingdom use any dog for the purpose of drawing, or helping to draw, any cart, carriage, truck, or barrow, shall forfeit and pay a penalty not exceeding forty shillings for the first offence, and not exceeding five pounds for the second and every subsequent offence, such penalties to be recovered in like manner as is provided for the recovery of penalties under the Act of 12 & 13 Vict. c. 92."

Penalty for improperly conveying animals.

By 12 & 13 Vict. c. 92, s. 12, "If any person shall convey or carry or cause to be conveyed or carried in or upon any vehicle any animal in such a manner or position as to subject such animal to unnecessary pain or suffering, every such person shall forfeit and pay a penalty not exceeding three pounds for the first offence, and a penalty of five pounds for the second and every subsequent offence" (a).

Apprehension of offenders.

Sect. 13. "When and so often as any of the offences against the provisions of this Act shall happen, it shall and may be lawful for any constable, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and

(a) At the Hants Midsummer Quarter Sessions, 1850, a conviction under this section for carrying a number of calves with their heads hanging out

at each end of the cart, was confirmed after a long trial, and the examination of a number of witnesses.

place of abode to the said constable, to seize and secure by the authority of this Act any such offender, and forthwith without any other authority or warrant to convey such offender before a justice of the peace, to be dealt with by such justice for such offence according to law."

It would seem under this section that if the offence against this Act is committed out of the view of the constable, the constable should inquire into the particulars of the complaint made to him, or should see the animal and so form a judgment as to what has occurred, and the person complaining to the constable should leave it to him to act or not as he thought proper, for if without so doing he directs the officer to take the offender into custody, he may render himself liable to an action for false imprisonment. (*See Hopkins v. Crowe*, 7 C. & P. 373.)

Sect. 14. "Every complaint under the provisions of this Act shall be made within one calendar month after the cause of such complaint shall arise, and every offence committed against this Act may be heard and determined by any justice of the peace within whose jurisdiction such offence shall be committed in a summary way upon the complaint of any person and without any information in writing; and it shall be lawful for any such justice in all cases, where any person complained of shall not be in custody, to summon such person to appear before such justice, or before any other justice of the peace at a time and place to be named in such summons; and on the appearance of the party accused, or in default of such appearance upon proof of the service of such summons, the said justice or any other justice who shall be present at the time and place appointed for such appearance shall proceed to examine into the matter; and if upon the confession of the party accused, or on the oath of one or more credible witness or witnesses, the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty, damage, or compensation as the said justice shall, according to the provisions of this Act adjudge, order, or award, together with the costs of conviction, to be settled by such justice, or be otherwise dealt with according to the provisions of this Act."

6. Cruelty to.

Justice may hear complaints made under this Act within one month after offence committed.

Sect. 15. "Any summons issued by such justice, requiring the appearance of any party charged as an offender against any of the provisions of this Act, shall be deemed and taken to be well and sufficiently served in case either the summons or a copy thereof shall be served personally on such person as aforesaid, or shall be left at his usual or last known place of abode, in whatever county or place such summons may be served or left."

As to service of summons.

Sect. 16. "Any justice of the peace may, without issuing any such summons as aforesaid, forthwith issue his warrant for the apprehension of any person charged with any offence against the provisions of this Act, whenever good grounds for so doing shall be stated on oath before such justice."

Warrant may be issued by justice without summons.

Sect. 17. "Any justice of the peace may summon any witness to appear and give evidence before him upon the matter of any offence against the provisions of this Act; and if any such witness shall, after tender of his reasonable expenses in that behalf, neglect or refuse to attend at the time and place stated in such summons, then, proof on oath being first given of the personal service of the summons upon such witness, such justice may issue his warrant for the apprehension of such witness, and such justice may commit any witness appearing or being brought before him who shall refuse to give evidence to the house of correction or common gaol within the jurisdiction of such justice, there to remain without bail or mainprize for any time not exceeding twenty-one days, or until such witness shall sooner submit himself to be examined and to give evidence; and in case of such submission the order of such justice shall be a sufficient warrant for the immediate discharge of such witness from custody."

Justices may summon witnesses to appear.

6. *Cruelty to.*

Offenders not
paying penalty
may be com-
mitted.

Sect. 18. "In every case of a conviction under this Act, where the sum imposed as a penalty, or the amount awarded for compensation or damage, together with costs (if any), by any justice of the peace, for or in respect of any offence against the provisions of this Act, shall not be paid immediately upon the conviction, or within such time as the convicting justice shall, in the exercise of his discretion, appoint and limit in that behalf, it shall be lawful for such justice and he is hereby required to commit the offender to the house of correction, there to be imprisoned, with or without hard labour, for any time not exceeding two calendar months, unless payment be sooner made; provided always, that if such conviction shall take place before two justices or before one of the police magistrates sitting at any police court within the metropolitan police district, it shall be lawful for such justices, or such police magistrate, if they or he shall think fit, instead of imposing a pecuniary penalty, forthwith to commit any such offender to the house of correction, there to be imprisoned, with or without hard labour, for any time not exceeding three calendar months."

Vehicles, &c.,
may be detained.

Sect. 19. "Whenever any person having charge of any vehicle or any animal shall be taken into custody by any constable for any offence against the provisions of this Act, it shall be lawful for such constable to take charge of such vehicle or animal, and deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof, or the owner thereof, may become liable, and for payment of any expenses which may have been or may be necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any justice of the peace before whom the case shall have been heard to order such vehicle or such animal to be sold for the purpose of satisfying such penalty and reasonable expenses, in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and expenses."

Penalty for
obstructing
constables.

Sect. 20. "In case any person shall at any time or in any manner unlawfully obstruct, hinder, molest or assault any constable or keeper of a pound while in the exercise of any power or authority under or by virtue of this Act, every such person shall forfeit and pay a penalty not exceeding five pounds for every such offence."

Distribution of
penalties.

Sect. 21. "All pecuniary penalties which shall be recovered before any justice of the peace under the provisions of this Act shall be respectively divided, paid, and distributed in the following manner; (that is to say), one moiety thereof to the overseers of the poor of the parish in which the offence shall have been committed, to be by such overseers applied in aid of the rates of their respective parishes, and the other moiety thereof to the person who shall complain and prosecute for the same, or to such other person as to such justice shall seem fit and proper; and that every sum of money which shall or may be ascertained, determined, adjudged and ordered by any justice of the peace under the authority of this Act to be paid as the amount of any damage or injury occasioned by the commission of any of the offences hereinbefore mentioned shall be paid to the person who shall or may have sustained such damage or injury, according to the order or determination and discretion of such justice: provided always, the moiety of penalties hereby directed to be paid to the overseers of the poor shall, if recovered before any justice of the peace under the provisions of this Act upon convictions of offences committed in Ireland, be paid to such hospital, dispensary or infirmary as the justice before whom the conviction shall have taken place may direct, to be by the treasurer thereof applied in aid of the funds maintaining such institution."

Proprietors of
public vehicles
may be sum-
moned to produce
their servants.

Sect. 22. "When any complaint shall be made before any justice of the peace against the driver or conductor of any hackney carriage, or the driver or conductor of any stage carriage, or the driver of any cart,

waggon, van or other vehicle, for any offence committed by him against the provisions of this Act, it shall be lawful for such justice, if he shall think proper, forthwith to summon the proprietor of such hackney or stage carriage, or the owner of such cart, waggon, van or other vehicle, to produce before him the driver, conductor or other servant by whom such offence was committed, to answer such complaint; and in case such proprietor or owner, after being duly summoned, shall fail to produce the driver, conductor or servant, it shall be lawful for the justice of the peace before whom such driver, conductor or servant, shall be required to be produced, if he shall think fit, to proceed, in the absence of such driver, conductor or servant, to hear and determine the case, in the same manner as if he had been produced, and to adjudge payment, by the proprietor or owner, of any penalty or sum of money and costs in which the driver, conductor or servant shall be convicted; and any sum of money which shall be so paid by the proprietor or owner shall and may be recovered in a summary way from the driver, conductor or servant through whose default such sum shall have been paid, upon proof of payment thereof, and of such servant's refusing or neglecting to be produced pursuant to the order of the justice, in the same manner as penalties are to be recovered under the provisions of this Act: provided always, that if the said justice of the peace shall deem it proper, it shall be lawful for him, when such proprietor or owner shall fail to produce his driver, conductor or servant, without any satisfactory excuse, to be allowed by such justice, to impose a fine of forty shillings upon such proprietor or owner, and so from time to time as often as he shall be summoned in respect of such complaint, until he shall produce the said driver, conductor or servant."

6. Cruelty to.

Sect. 23. "Every conviction for any offence against this Act may be drawn and made according to the following form or to the effect thereof, or as near thereto as the case shall permit:—

Form of conviction.

Be it remembered, that on the _____ day of _____ in the year _____ of our Lord _____ A. B. is brought before me [or us] C. D. et cætera, a justice [or justices] of the peace for the [here insert the county, borough, or other jurisdiction of the justice or justices], and is charged before me [or us] with having [here describe the offence], contrary to the provisions of a certain Act, [here insert the title of this Act,] and it appearing unto me [or us] upon the confession of the said A. B. [or upon the oath of a credible witness or witnesses, as the case may be], that the said A. B. is guilty of the said offence, I do therefore adjudge the said A. B. [here insert the adjudication, and, in the case of a second or subsequent offence, add these words, the same being the second [or any subsequent] offence against the provisions of the said Act]. Given under my [or our] hand [or hands] at [here insert the place where the justice or justices may be], the day and year first above written."

Sect. 24. "Every justice of the peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to the next general or quarter sessions which shall be holden for the county, borough, or other jurisdiction wherein the offence shall have been committed, there to be kept by the proper officer among the records of the said court; and upon any complaint or proceeding against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the said court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown."

Convictions to be transmitted to general or quarter sessions.

Sect. 25. "In all cases where the sum adjudged to be paid on any conviction shall exceed two pounds, and in all cases where imprisonment shall be adjudged, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than fourteen days after the day of such conviction for the county, borough, or other jurisdiction

Appeal.

6. Cruelty to.

wherein the cause of appeal shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody, and the court at such sessions shall hear and determine the matter of the appeal and shall make such order therein as to the court shall seem meet, and in case of the dismissal or non-prosecution of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be thereby awarded, and also the costs of such appeal, or incident thereto, or occasioned thereby, and shall, if necessary, issue process for enforcing such judgment: provided always, that it shall be lawful for the said court to adjourn the hearing of any such appeal to any succeeding sessions, if such court shall think fit; and such court, in the event of such postponement, may make any order for the payment of costs by either party to the other as to such court shall seem reasonable."

The sum adjudged to be paid on conviction within the meaning of this clause, refers to the sum in which the party is convicted by way of penalty or compensation, and does not include the amount awarded for costs. (*Reg. v. Justices of Warwickshire*, 6 E. & B. 837; 25 L. J. M. C. 119.) In that case W. was convicted and adjudged to pay the sum of two shillings and sixpence as a penalty for ill-treating a gelding, and also to pay the sum of two pounds seven shillings and sixpence for costs, and in default of immediate payment to be imprisoned for fourteen days, unless the said sums were sooner paid. W. gave notice of appeal to the next quarter sessions, but abandoned the appeal before the sessions were holden. The quarter sessions afterwards made an order on W. to pay, in addition to the above two sums, the costs occasioned by his notice of appeal to the prosecutor, but the Court of Queen's Bench made absolute a rate for a *certiorari* to remove the order of quarter sessions as made without jurisdiction, inasmuch as no appeal was given by the above section from the above conviction to the sessions. (*Ib.*)

Convictions not
to be removed.

Sect. 26. "No conviction made under the authority of this Act, nor any order, judgment or proceeding relative thereto, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record; and no warrant of commitment under the provisions of this Act shall be held void by reason of any defect therein, provided it be therein alleged that the party committed has been convicted, and there be a good and valid conviction to sustain the same."

As to actions.

Sect. 27. "No action shall be brought against any justice of the peace or other person for anything done in pursuance or under the authority of this Act, unless such action shall be commenced within two calendar months next after the fact committed, and no such action shall be commenced until one calendar month at least after a notice in writing of such intended action shall have been delivered to the defendant, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action shall be clearly and explicitly stated, and upon the back thereof shall be endorsed the name and place of abode of the parties so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such

A month's notice,
of action neces-
sary.

notice have been served by such attorney or agent; and in every such action the venue shall be laid in the county where the act complained of was committed, or, in actions in the county court, the action shall be brought in the court within the jurisdiction of which the act complained of was committed; and the defendant in any such action shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification in evidence under such plea, at the trial of such action; and in every such case, after notice of action shall be given as aforesaid, and before such action shall be commenced, the defendant to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit, as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, shall be at liberty to pay into court such sum of money as he may think fit; and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if it shall be found at the trial that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, or beyond the sums so tendered and paid into court, the defendant shall be entitled to a verdict, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such shall be brought an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs, to be taxed; and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause."

To entitle a person to notice of action under this statute for wrongfully selling a colt under the 12 & 13 Vict. c. 92, s. 27, and the 17 & 18 Vict. c. 60, s. 1, it ought to be shown that the party impounding and selling had a right to distrain, or at least some colour for it, (*Machell v. Ellis*, 1 C. & K. 682,) and that the defendant acted *bonâ fide* in selling, and intended to act under the statute; (*Macon v. Newland*, 9 C. & P. 578;) or in action for false imprisonment, for giving a person into custody wrongfully, that he left the constable to act or not as he thought proper upon the information he gave him. (See 12 & 13 Vict. c. 92, s. 13.)

Sect. 28. "If at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or when such plaintiff shall sue in the county court within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the defendant shall be entitled to a verdict; and the defendant shall in all cases where he shall obtain judgment, upon verdict or otherwise be entitled to his full costs in that behalf, to be taxed as between attorney and client."

Sect. 29. "That for the purposes of this Act the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; (that is to say,)

The word 'justice' shall be taken to mean a justice of the peace or

6. Cruelty to.

Venue.

Plea.

Tender of
amends.Payment into
court.Meaning of
certain words.

6. Cruelty to.

magistrate for the county, city, borough, liberty, cinque port, riding or other jurisdiction in which any offence against this Act shall be committed, or in which the matter requiring the cognizance of any justice of the peace or magistrate shall arise :

The word 'animal' shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal : (17 & 18 Vict. c. 60, s. 3, *ante*, p. 208 :)

The word 'constable' shall be taken to mean any headborough, parish beadle, peace officer, special constable, or any person belonging to the metropolitan or city of London police forces, or any constabulary force in any part of the United Kingdom :

The expression 'house of correction' shall be taken to mean the house of correction or common gaol for the county, city, borough, liberty, cinque port, riding or other jurisdiction for which the justice of the peace by whom any person shall be committed under the provisions of this Act shall act :

And, subject to the context and to the nature of the subject-matter, words denoting the singular number are to be understood to apply also to a plurality of persons, animals or things; and words denoting the masculine gender are to be understood to apply also to persons and animals of the feminine gender ; and the word over-drive shall also signify over-ride."

Sect. 30. "This Act shall not extend or apply to Scotland."

Act not to extend to Scotland.

Injuries to cattle and sheep by dogs.

The owners of dogs are rendered liable for injuries done to cattle or sheep by dogs, by the 28 & 29 Vict. c. 60, (see tit. "*Dogs*,") and damages to the extent of five pounds are recoverable by summary proceedings before justices in petty sessions under that Act.

Annuity.

[53 Geo. III. c. 141 ; 17 & 18 Vict. c. 90.]

SINCE 1854 the 53 Geo. III. c. 141, 3 Geo. IV. c. 92, & 7 Geo. IV. c. 75, have been repealed by the 17 & 18 Vict. c. 90, and therefore amongst other provisions and penalties, those contained in 53 Geo. III. c. 141, s. 8, against contracts for the purchase of any annuity or rent charge with any person being under the age of twenty-one, whereby the same were made void, any attempt to confirm the same notwithstanding.

But it is provided by 17 & 18 Vict. c. 90, s. 2, that nothing therein contained should prejudice or affect the rights or remedies of any person, or diminish or alter the liabilities of any person in respect of any act done previously to the passing of that Act. Therefore the 53 Geo. III. c. 141, may still have some operation.

Endeavouring to induce infants to grant annuities.

By 53 Geo. III. c. 141, s. 8, it was further enacted, "And that if any person shall either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person being under the age of twenty-one years to grant or attempt to grant any annuity or rent-charge, or to execute any bond, deed, or other instrument for securing the same, or shall advance or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent-charge to be secured or granted by such infant after he or she shall have attained his or her age of twenty-one years, or shall induce or solicit or procure any infant, upon any treaty or transaction for money advanced or to be advanced, to make oath or to give his or her word of honour or solemn promise that he or she will not plead infancy, or make any other defence against the

demand of any such annuity or rent-charge, or the re-payment of the money advanced to him or her when under age, or that when he or she comes of age he or she will confirm or ratify or in any way substantiate any annuity or rent-charge; every such person shall be guilty of a misdemeanour, and being thereof lawfully convicted in any court of excise, oyer and terminer or general gaol delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment as the court shall think fit to award."

The 9th section of the same Act enacts, "That all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and all other persons or person, who from and after the passing of this Act shall ask, demand, accept or receive directly or indirectly any sum or sums of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *bonâ fide* advanced and paid as and for the price or consideration of any such annuity or rent-charge, over and above the sum of ten shillings for every one hundred pounds so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanour; and being convicted of such offence in any court of assize, oyer and terminer or general gaol delivery, shall and may for every such offence be punished by fine and imprisonment, or one of them, at the discretion of the court; and that the person or persons who shall have paid or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same."

On an indictment under this latter section, it is not necessary to prove that the defendant took the exact sum laid in the indictment, though it be not laid under a *videlicet*. (*Rex v. Gillham*, 6 T. R. 265; 1 Esp. 285; see form of indictment, *id.*)

On the trial of such an indictment it must be left to the jury to consider, whether the excess of ten shillings in the one hundred pounds were really taken as a fair charge for drawing the writings, &c., or whether it was not so taken as a device to avoid the statute. (*Rex v. Gillham*, 6 T. R. 265.)

By stat. 29 Geo. III. c. 41, s. 27, and other Acts respecting life annuities, oath of an annuitant's life may be made before a justice of the peace, who shall give a certificate thereof without fee or stamp duty, in order to entitle such person to receive his annuity.

By sect. 2 of stat. 56 Geo. III. c. 53, passed to amend the Acts of 48 Geo. III. c. 142; 49 Geo. III. c. 64; and 52 Geo. III. c. 129, for enabling the commissioners for the reduction of the national debt to grant life annuities, it is enacted, "That in case any person who shall have been named as a nominee, on the continuance of whose life any annuity is to depend, shall after his or her nomination become resident in any kingdom or state in Europe in amity with his Majesty, or if he or she shall become resident in any other kingdom, state, or place beyond the seas, then and in every such case a certificate that such nominee was living on the day specified therein, (being some day after any annuity depending upon his or her life shall have become due,) granted under the hand and seal of the chief magistrate of any city, town, or place, or any other magistrate acting at the time as such, or for and in the place of any such chief magistrate where such nominee may be then living, shall be deemed sufficient and effectual for proving the continuance of the life of such nominee, and for the purpose of enabling the person entitled to the annuity dependent upon the life of such nominee to receive the same: provided no British minister, or consul, or governor, or person acting as such, shall be resident in such city, town, or place, although a British minister, or consul, or governor, or person acting as such may be resident in the kingdom, state, or settlement wherein such nominee shall be then living."

Sect. 3. "To every such certificate as aforesaid there shall be affixed an affidavit or solemn affirmation made before any justice of the peace

Annuity.

Misdemeanour.

Acting as solicitors, &c., in such cases.

Misdemeanour.

Witnesses.

Indictment for, &c.

Oath, &c., of annuitant's life.

Certificates of lives of nominee abroad required.

Identity to be verified by affidavit, &c.

Annuity.

or magistrate in England or Scotland respectively, or if in Ireland before one of the barons of the exchequer there, by the person or persons entitled to the said annuity, or by the person applying to receive the same on his, her, or their behalf, that the matters contained in such certificate are, to the best of his or her belief, true; and that the person described or certified therein is the nominee or one of the nominees on whose life or lives the annuity whereof such half-yearly or other payment shall be claimed doth depend."

Appeal.

What.

To sessions, &c.

THE term *Appeal* is used in two senses :

First, it signifies a complaint and removal to a superior court of the judgment of an inferior one, being in the nature of a writ of error, (per *Buller, J., Proser v. Hyde*, 1 T. R. 414,) and in this sense it is used when applied to the removal of orders or convictions of justices out of sessions to the judgment of the court of sessions. In this sense it differs from the remedy by *certiorari*, not being, as the latter is, a common law right for the purpose of obtaining the judgment of a superior tribunal, but a qualified right given only by the special provisions of a statute.

Appeals of murder, &c.

Secondly, it signifies an accusation by a private individual against another for some heinous offence, demanding punishment on account of the particular injury suffered, rather than for the offence against the public.

Abolished.

This latter mode of appeal had fallen entirely into disuse until the case of *Ashford v. Thornton*, in 1818, (1 Barn. & Ald. 405), where full information may be gained on the subject. This case occasioned the passing of the 59 Geo. III. c. 46, which abolishes all appeals of treason, murder, felony, or other offences.

Its effect.

An appeal from an order or conviction is not of itself, in the absence of statutory enactment, a stay of execution pending the appeal, though it would be exceedingly improper in a justice to grant a warrant when a *bonâ fide* notice of appeal has been given, and the necessary preliminary steps *bonâ fide* taken. (*Kendall v. Wilkinson*, 4 E. & B. 689; 24 L. J. M. C. 89; *R. v. Brooke*, 2 T. R. 196; *Ex parte Wilmott*, 1 E. B. & S. 27; 30 L. J. M. C. 161.) And when the legislature intends that execution upon the judgment appealed against should be suspended pending appeal, it should say so expressly, as, for instance, it has done in 6 Geo. IV. c. 129 (the Act relating to the intimidation of workmen).

We will now notice the *general* law and practice relative to appeals in the first sense under the following order. As to appeals in *particular* cases, see the various titles throughout this work.

Appeal in matters relating to summary convictions and orders lies :
1. To the sessions. 2. To the superior court on a case stated by justices out of sessions under 20 & 21 Vict. c. 43. 3. In criminal matters to the Court of Crown Cases Reserved.

I. *Of Appeal to the Sessions, when it lies in general, when it must be resorted to, and parties to*, 219.

II. *When Justices to inform Party of his Right to*, 221.

III. *To what Sessions*, 222.

IV. *Preliminary Steps*, 228; as 1st, *Notice of Appeal*, 229; 2nd, *Recognizance, &c.*, 236; 3rd, *Entering of Appeal*, 237; 4th, *Effect of not taking such Steps*, 237.

- V. *Hearing and Trial*, 240; *Judgment*, 244; and *Adjournment*, 253.
- VI. *Entering and Respiting of, and Notice of Trial after same*, 255.
- VII. *Costs*, 257.
- VIII. *Appeal from Justices out of Sessions by means of a case stated by Justices under 20 & 21 Vict. c. 43*, 262.
- IX. *Appeal to Court of Crown Cases Reserved*, 268.
- X. *Forms*, 273.

1. *When it lies.*

I. Of Appeal to Quarter Sessions: when it lies in General, when it must be resorted to, and Parties to.

An appeal is not like a *certiorari*, a common law right; it lies only where it is expressly given by statute; (*Reg. v. Warwickshire*, 6 E. & B. 837; 25 L. J. M. C. 119; *R. v. Cashiobury*, 3 D. & R. M. C. 485; *R. v. Hanson*, 4 B. & Ald. 521; *R. v. Justices of Oxfordshire*, 1 M. & S. 448;) but, if not created by express affirmative language, may arise by an inference absolutely necessary, and where language is used which is tantamount to express enactment. (*R. v. Justices of Hants*, 1 B. & Ad. 654; *Reg. v. Justices of Worcester*, 3 E. & B. 477-487; 23 L. J. M. C. 113.) On the other hand, a *certiorari* always lies unless expressly taken away.

Only lies when given by statute.

The right of appeal must be given by express enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated in the statute. (*R. v. Justices of Surrey*, 2 T. R. 509; *R. v. Stock*, 8 A. & E. 405; *R. v. Recorder of Ipswich*, 8 Dowl. 103; *R. v. Justices of Warwickshire*, 2 Jur. Q. B. 543; *R. v. Justices of Yorkshire, West Riding*, 1 Q. B. 325; *R. v. Justices of Warwickshire*, 6 E. & B. 837; 25 L. J. M. C. 119; *Paley on Conv. by Macnamara*, 5 ed. 342.)

But a right of appeal generally by a statute cannot be defeated by inference; therefore, when an appeal was given against any matter not declared by a statute final and conclusive, and it was enacted that certain accounts should not be *binding* unless allowed by justices, an appeal was held to be against such allowance. (*R. v. Justices of Cumberland*, 1 D. & Ry. M. C. 240; 1 B. & C. 64.) So when it was given from an order of justices involving questions both of law and fact to a court competent to deal with both, an appeal was held to lie upon the matter of law as well as of fact. (*Reg. v. Justices of Worcestershire*, 3 E. & B. 477-488.)

As to the right of appeal under a subsequent statute making the enactments of prior statutes applicable thereto, see *R. v. Nuisances Removal Committee of Middleton*, 1 E. & E. 98; 28 L. J. M. C. 40; *R. v. Justices of Surrey*, 2 T. R. 509; *R. v. Stock*, 8 A. & E. 405; *R. v. Justices of Yorkshire, West Riding*, 1 Q. B. 325; *R. v. Mayor of Liverpool*, 3 D. & R. 275; *R. v. Justices of Bucks*, 7 B. & C. 3; *R. v. Harwich Rec.*, 8 Dow. P. C. 103; *Reg. v. Justices of Glamorgan*, 13 Q. B., 561; 18 L. J. M. C. 116; *Reg. v. St. Peter*, 17 Q. B. 630; 21 L. J. M. C. 23; see "*Excise*," *post*.

When subsequent statute incorporates prior statute.

If the matter of grievance is the act or decision of functionaries, or a court entrusted by the law with cognizance over the subject-matter and acting within their jurisdiction, the remedy must be by appeal; but if such act or decision is in excess of or beyond such jurisdiction, it is void, and may either be appealed against by the party grieved, or be treated as a nullity, and its enforcement be resisted without appeal, or if enforced, the party enforcing be subjected to liability in an action.

When it must be resorted to.

1. *When it lies.*

(*Overseers of Birmingham v. Shaw*, 10 Q. B. 868; 18 L. J. M. C. 89; 3 N. S. C. 445.) In poor-rate cases, if the rate is good on its face and made by competent authority, and on a person, and in respect of occupation of property apparently within the jurisdiction of that authority, the only remedy of the person seeking to resist it is by appeal. (*Overseers of Birmingham v. Shaw*, *ubi sup.*; *Reg. v. Justices of Kingston, F. B. & E.* 256; 27 L. J. M. C. 199.) And if the party rated, being in the visible occupation of property within the rating parish, objects that his occupation is devoid of benefit to him, his remedy is by appeal. (*Ibid.*; *Reg. v. Bradshaw*, 2 E. & E. 836; 29 L. J. M. C. 176; *Mersey Docks v. Cameron*, 9 C. B. N. S. 812; 30 L. J. M. C. 194.) But if the land in respect of which the rate is imposed is locally situate out of the rating parish, or if the person rated is not the occupier in fact of the premises, an appeal is not necessary, but the rate may either be appealed against on that ground, or may be treated as void, and its enforcement by the justices resisted, or an action be brought against the party enforcing it. (*Overseers of Birmingham v. Shaw*, *ubi sup.*; *Weaver v. Price*, 3 B. & Ad. 409; *Milward v. Caffin*, 2 W. Bl. 1330; *Amherst v. Sommers*, 2 T. R. 372.) The same principle applies to a person rated as an inhabitant possessing visible personal property in the parish. If he be in fact an inhabitant he must appeal, though he has no rateable property of any value; (*Marshall v. Pitman*, 9 Bing. 595;) and also in cases of highway rate, (*Fawcett v. Fowles*, 7 B. & C. 394,) a church rate, (*Ex parte May*, 2 B. & S. 426; 31 L. J. M. C. 161,) a sewers rate, (*Reg. v. Newman*, 2 E. & E. 420; 29 L. J. M. C. 117,) a special district rate under Public Health Act, (*Luton Local Board of Health v. Davis*, 2 E. & E. 678; 29 L. J. M. C. 173,) and a rate by Inclosure Commissioners, under a private Inclosure Act (*Bonnell v. Beighton*, 5 T. R. 182).

In some cases the legislature has expressly excluded the right of appeal; (*R. v. Bedwell*, 4 E. & B. 213; 24 L. J. M. C. 17;) and it has been held that, if an order of commitment be excepted out of the appeal clause, where there must be a conviction apparent in the commitment, the conviction is not the subject of appeal. (*R. v. Justices of Staffordshire*, 12 East, 572.)

In the recent amendments of the criminal law, a power of appeal is given when on summary conviction the sum adjudged to be paid shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only; (24 & 25 Vict. c. 96, s. 110; 24 & 25 Vict. c. 97, s. 68;) and the Act (12 & 13 Vict. c. 92) for the Prevention of Cruelty to Animals gives an appeal when the sum adjudged to be paid on any conviction under that Act exceeds two pounds. Under this last-mentioned Act it has been held that in order to determine whether an appeal lies, the amount to be paid by way of penalty or compensation, irrespective of the amount of the costs, is to be considered. (*Reg. v. Justices of Warwickshire*, 6 E. & B. 837; 25 L. J. M. C. 119; but see as to the meaning of "sum adjudged," *Ricardo v. Maidenhead Local Board of Health*, 27 L. J. M. C. 73; 2 H. & N. 257; see *post*, 221.)

For particular cases in which the right of appeal is given, see the various titles throughout this work.

The party to whom the right of appeal is given is termed the appellant.

The statute giving the right of appeal sometimes points out the party who is to be the respondent; when this is not the case, the party to whom the statute directs the notice of appeal to be given is usually the respondent. (But see *contra Reg. v. Purdey*, 5 B. & S. 909; 34 L. J. M. C. 4; *Reg. v. Smith*, 29 L. J. M. C. 216; *Reg. v. Justices of Hants*, 1 B. & Ad. 654.)

If a statute gives a right of appeal to a "person who shall think himself aggrieved," those words mean a person who is immediately aggrieved by the act done, and not to one who is consequentially

aggrieved. (See *R. v. Justices of Middlesex*, 3 B. & Adol. 938). And such an enactment only means to give an appeal to any one who has legal ground for saying that he is aggrieved. (*Harrup v. Bayley*, 6 E. & B. 218; 25 L. J. M. C. 107; *R. v. Bishop Wearmouth*, 5 B. & Ad. 942.)

If trustees are enabled by a local Act to sue or be sued in the name of one of them, he may appeal under the words "party grieved" though not personally aggrieved; and notice of appeal and recognizance may be given and entered into by him only. (*R. v. Justices of Surrey*, 5 A. & E. 701, n.) As to who is not a party aggrieved, see *R. v. Edwards*, 5 B. & Ad. 407, n.; *R. v. Dewhurst*, id. 405. A corporation may be a "person aggrieved." (*Cortis v. Kent Waterworks Co.*, 7 B. & C. 314.)

The grievance must be in existence before the right to appeal arises. (*R. v. Shrewsbury Rec.*, 1 E. & B. 711—720; 22 L. J. M. C. 98; *R. v. Justices of Westmoreland*, 1 D. & L. 170; but see *R. v. Bishop Wearmouth*, 5 B. & Ad. 942.) Where the appeal was given to persons "aggrieved by a judgment or determination of justices," by an Act relative to the removal of the poor, an order of removal cannot be appealed against if there has been no service of the notice of chargeability, for till such service there is no power of removal, and the time for appealing dates from such service, and service merely of the order is a nullity. (*Reg. v. Rec. of Shrewsbury*, *ubi sup.*, overruling *R. v. Brixham*, 8 A. & E. 375.)

The 12 & 13 Vict. c. 92, gives an appeal against a conviction "in all cases where the sum adjudged to be paid" shall exceed two pounds, and it was held that the sum adjudged was the penalty exclusive of the costs, and therefore no appeal lay from an order adjudging the appellant to "pay the sum of two shillings and sixpence as a penalty, and the sum of two pounds seven shillings and sixpence for costs." (*Reg. v. Justices of Warwickshire*, 6 E. & B. 837; 25 L. J. M. C. 119; see also *Ricardo v. Maidenhead Local Board of Health*, 27 L. J. M. C. 73; 2 H. & N. 257; *ante*, 220.)

2. Justices to inform party.

Where "sum adjudged to be paid" exceeds a certain amount.

II. When Justices to inform Party of his Right of Appeal.

In general there is no enactment requiring any information, by justices or others, to be given to a party of his right to appeal, and he is bound to know the law in this respect, or else lose the benefit of it.

Where a statute in general terms requires the justices to make known to a party his right to appeal, it is necessary that they should inform him of the steps he should adopt towards enforcing his right; as of his giving them a notice in writing, as well as entering into a recognizance. (See per Lord Kenyon, *R. v. Leeds*, 4 T. R. 583.)

But the necessity for this minute information may be waived, as in *R. v. Justices of West Riding of Yorkshire*, (3 M. & Sel. 493,) where a defendant had been convicted by two justices for an offence against the 17 Geo. III. c. 56, s. 14; by sect. 20 of which the justices are bound to make known to the defendant, at the time of conviction, his right to appeal at the next general quarter sessions, and it appearing from the return to a *mandamus* that the justices had in fact made known to the defendant his right to appeal, whereupon he waived any intention of appealing by replying to them that he thought he had better pay the penalty: the court held, that the justices need not have gone on to inform him of the necessary steps to be taken in order to appeal. And Lord Ellenborough, C. J., said, "How could it be necessary for the convicting magistrate to proceed after the party had signified to them that he did not mean to appeal? The argument is founded upon a supposed necessity of engrafting the observance of all the provisions of the statute as they apply to another state of things, as was the case in *R. v. Justices Leeds*, (4 T. R. 583,) into this case, where the same reason for their

When justices to inform party of his right of appeal.

2. *Justices to inform party.*

observance does not exist. All that the statute positively requires is, that the justices shall make known to the person convicted his right to appeal—they did so; and if he had thereupon gone on to signify his intention to appeal, *non liquet* that they would not also have proceeded to make known to him the further steps that were to be taken by him; but why should they do so nugatory an act as to inform him what he must do to appeal, and to enforce his right, after he had declined appealing and waived his right.”

III. To what Sessions.

To what sessions
appeal to be
made.

The statute which points out the sessions to which the appeal is to be made must be strictly followed. The appeal usually given by the legislature is not to the next general sessions, if there be such sessions holden distinct from the quarter sessions, but to the next quarter sessions. (*R. v. Justices of Middlesex*, 4 Q. B. 807; *R. v. Justices of London*, 15 East, 632; *R. v. Turnock*, 2 Salk. 474; *R. v. Turner*, 5 Mod. 329.)

As to place.—An appeal from a conviction by justices of a particular franchise is in general given to the sessions held for that franchise, and not to the general quarter sessions of the county. In the case of a conviction under 22 Car. II. c. 1, s. 6, which directs an appeal “to the judgment of the justices of the peace in the next quarter sessions,” it was held that an appeal from the conviction of corporation magistrates must be to the sessions of the borough corporate. (*South Moulton Case*, *Skin.* 122; *Burr.* 592, S. C.) Appeals against orders for the removal of the poor made by borough justices are to the borough quarter sessions under “The Municipal Corporation Act.” (*Reg. v. Justices of Shropshire*, 2 Q. B. 85; 10 L. J. M. C. 138; see tit. “Poor.”) But the recorder of a municipal borough has no power in quarter sessions to hear an appeal against a refusal by borough justices to grant a license for keeping an inn, (*Reg. v. Cockburn*, 4 E. & B. 265; 24 L. J. M. C. 43, *sub nom.*; *Reg. v. Recorder of Bristol*.) for that appeal lies to the county quarter sessions. (*Reg. v. Deane*, 2 Q. B. 96; 10 L. J. M. C. 126.)

The appeal against an order under the 16 & 17 Vict. c. 97, s. 97, adjudging the settlement of a pauper lunatic confined in a borough lunatic asylum, and obtained by a parish situate wholly within the borough, having separate quarter sessions, and made by two justices of the borough, the asylum being also within the borough, is nevertheless to be made to the county quarter sessions, and not the borough, under the 108th section of the statute. (*Reg. v. Justices of Warwickshire*, 28 L. J. M. C. 249; see also, under 8 & 9 Vict. c. 126, *R. v. Lancashire Justices*, 12 Q. B. 305; 18 L. J. M. C. 121.)

By 16 & 17 Vict. c. 97, s. 108, an appeal is given to any union or parish against an order adjudging the settlement of a lunatic confined in an asylum to the quarter sessions for the county within which the union or parish obtaining the order is situate, or if the union or parish extend into several jurisdictions, then to the quarter sessions of the county or borough in which the asylum is situate. Where such an order was obtained by a union which was made up of parishes, some of which were within a city which, though in the county, had separate quarter sessions, and some in the county without the city, it was held that the appeal against the order lay to the quarter sessions for the county, and not to the sessions of the borough within which the asylum was situate. (*Reg. v. The Justices of Kent*, 7 B. & S. 394; 35 L. J. M. C. 201.)

In some counties the quarter sessions are held by adjournment at different places for the convenience of the different districts. In this case they are in law but one sessions for the whole county. (*R. v. Justices of Sussex*, 7 T. R. 107; *R. v. Surrey*, 1 M. & S. 479; *R. v. Suffolk*, 4 D. &

Sessions held
at different
places.

L. 628; 5 D. & L. 568; R. v. Lancashire, 8 E. & B. 563; 27 L. J. M. C. 161.) But when, for practical convenience, the county is divided into distinct divisions, and in each division a distinct court is held, so that all questions locally arising within each division by practice belong to that division, and all the process for that division is returnable at the court for that division, and the panels of the jurors are made out for that division, and the rules of practice made by the court for each division, for the conduct of business in it, assume the day when the court for that division begins its sittings is the first day of the sessions of that division, the time for giving notice of appeal, and sending grounds of appeal against an order of removal, is to be regulated with reference to the rules of practice for that division. (*Reg. v. Justices of Sussex, 4 B. & S. 966; 34 L. J. M. C. 69.*)

3. To what Sessions.

As to time.—If there be no time pointed out by the statute as to when the appeal must be made, it must be made in a reasonable time. (*R. v. Justices of Oxfordshire, 1 M. & S. 448; R. v. Justices of Gloucestershire, 3 M. & S. 127.*)

When no time fixed.

The time for the appeal is in general limited to the next sessions after the conviction or act to be appealed against, or else to the sessions which shall be held after so many days from the conviction or act done.

To next sessions.

Many difficult questions have arisen as to what time the term next session is to be calculated from—generally speaking, it means the next practicable session after the principal act done; (*see R. v. Justices of Essex, 1 B. & Ald. 210; R. v. Hendon, 2 D. & R. 249; 1 D. & R. Mag. Ca. 245, S. C.; R. v. Justices of Sussex, 15 East, 206; R. v. Thackwell, 6 D. & R. 61; 4 B. & C. 62; 3 D. & R. Mag. Ca. 121, S. C.; R. v. Justices of Suffolk, 8 Dowl. 618; R. v. Justices of Cornwall, 6 Ad. & Ell. 894; R. v. Justices of Cheshire, 1 Dowl. N. S. 570;*) but as no fixed rule can be well laid down, it is best to refer to the following decisions thereon.

From what time such session is to be reckoned.

Under a statutory provision, giving an appeal to the person aggrieved by the judgment of a justice to the next quarter sessions, the sessions next after the conviction are intended, and not the sessions next after the execution or levying of the penalty. (*Proser v. Hyde, 1 Term Rep. 414.*) This case arose on an appeal against a conviction on the (now repealed) 24 Geo. III. c. 31, for not entering horses liable to duty. *Et per Ashurst, J.*, “The words of the Act are decisive, for it says, ‘If any person shall find himself aggrieved by the judgment of any such justice, &c., he may appeal to the justices at the next general quarter sessions;’ therefore the plaintiff should have appealed to the sessions next after the judgment.” *Et per Buller, J.*, “The cases relative to appeals against orders of removal are very distinguishable from the present. All orders of removal are *ex parte* proceedings, and the other party cannot know any thing of them till the actual removal, but this conviction is more like a judgment of this court than an order of removal. The grievance to the party is the judgment, and not the execution.”

Against a “judgment.”

Where an appeal was given within three months after conviction, the party has three months to signify his intention of appealing, and is not bound to appeal to the sessions which occurred within that time. The statute does not require the appeal to be lodged within this time, for that could not in some instances be done, as more than three months often intervene between the Epiphany and Easter Sessions. (*R. v. Middlesex, 6 M. & Sel. 279.*) And it was so held upon the construction of the “General Inclosure Act,” (8 & 9 Vict. c. 118, s. 63.) (*Reg. v. Justices of Essex, 34 L. J. M. C. 41.*)

Within a certain time after conviction.

The time from whence the right to appeal commences, where the Act limits it after the “cause of complaint” arises, may be collected from the following decision:—By the late “General Highway Act,” (13 Geo. III. c. 78, s. 80,) an appeal was given upon giving notice “within six days after the cause of the complaint arises.” In *R. v. Devon, (1 M. &*

“After cause of complaint.”

3. *To what Sessions.*

Sel. 411.) it was determined that the levy under, and not the signing of, the warrant of distress, was "the cause of complaint;" and therefore where a person assessed under this Act had refused to pay, and a warrant of distress was signed and granted by two justices on the 4th of December, which was executed on the 12th, and the party thereupon gave notice of appeal within six days after the 12th of December, the sessions dismissed the appeal. But Lord *Ellenborough* ruled, upon a motion for a mandamus, that the party had appealed in time, it being within six days after he was actually damnified: "It is not necessary he should appeal on the warrant, for *non liquet* that it would be proceeded upon."

The appeal clause in the "Turnpike Act," (4 Geo. IV. c. 95, s. 87,) (now repealed,) was very similar; and where, under this statute, the justices made an order on the surveyor of a township to perform certain statute duty on a turnpike road, and to pay to the turnpike surveyor part of the composition, it was held that the order of the magistrates was not complete until the surveyor of the township was in possession of the order, and that the *cause of complaint* arose when the order was served; and the notice of appeal being given within six days after the service, a mandamus was issued to compel the sessions to hear it. *Bayley, J.*, observed, "That parties are often present in court when rules are pronounced, but they are not bound to take notice of them until they are served. The surveyor may or may not be present when this order is made, and it is desirable that the practice should be uniform when he attends and when not. If he does not attend, he cannot state the matter of appeal as required till he is served with the order." (*R. v. Lancashire Justices*, 8 B. & C. 593; 2 Man. & R. 519.) Under the "Nuisances Removal Act, 1858," (18 & 19 Vict. c. 121, s. 22,) an assessment of a rate upon a house was held not to give ground for appeal till served. (*R. v. Nuisances Removal Committee of Middleton*, 1 E & E. 98; 28 L. J. M. C. 41.)

Again, in further illustration of this: on an appeal under an Act for the inclosure of certain lands in Middlesex, passed with a clause giving an appeal in the usual terms, "within six months from the time when the cause of complaint shall have arisen," the commissioner, at a meeting under the Act holden on the 18th of June, 1818, showed the map to the present appellant, with the allotment marked out upon it, which he, the commissioner, had assigned to him, the appellant. The latter raised some objections to it, and desired the commissioner to re-consider it. He did so, but did not think fit to make any alteration, and having received no further application, on the 28th of August following sent a formal notice to the appellant that the land remained allotted to him according to the map exhibited to him on the 18th of June previous, and on the same day the said allotment was accordingly staked out by command of the said commissioner. According to the particular Act, as well as the General Act of Inclosure, no allotment ought to be made till the roads have been set out, and the roads in this case could not be staked out till the end of July, because the crops were on the ground. The appeal was lodged on the 9th of January, and respite till the 29th of April, when it was opposed on the ground of not having been lodged in time, i. e. within six months from the cause of complaint arising; and the justices dismissed the appeal on this ground: but on motion for a mandamus to compel the justices to enter continuances and hear the appeal, the Court of Queen's Bench thought "there was no actual setting out of the allotment in this case, according to the true construction of the Act, till something was actually done founded upon the plan," and made the rule absolute. (*R. v. Justices of Middlesex, Talfourd's Dick. Sess. 637*; and 1 Chit. R. 366. And see *R. v. Nockolds*, 3 Nev. & M. 334; 1 Ad. & Ell. 245.)

"Cause of complaint."

By a statute the guardians of the poor were incorporated for a parish, and twelve of them to be directors of the poor, and were authorised to

contract debts and grant annuities. And it was provided, that if any person shall think himself aggrieved by any thing done in pursuance of the Act, such person might appeal "within four calendar months next after the cause of complaint shall have arisen." A rated inhabitant appealed against certain orders, for the payment of money, and certain payments which had been made and allowed within the preceding four months, on the ground that the orders, payments, and allowances were in respect of annuities, which ought not to have been granted, and of interest upon parish securities, which had been improperly contracted. It was held, that cause of complaint was the order for payment and not the borrowing money or granting securities. (*Reg. v. Justices of Salop*, 2 B. & Ad. 145.)

In a private inclosure Act power was given to the commissioners to set out land in a certain proportion in lieu of tithes to the vicar, with the following clause of appeal—"and if any person shall think themselves aggrieved by any thing done in pursuance of this Act, they may appeal to any general quarter sessions of the peace for the county, &c., within six calendar months after such cause of complaint shall have arisen." The commissioners made an allotment upon the map, which the vicar inspected in November, 1812, and appointed an agent, who attended a subsequent meeting, when an alteration was made, which such agent approved, and it was understood at the meeting, where such agent so concurred, that all objections were reconciled, and the allotments definitively settled. In November, 1813, the commissioners gave notice that all tithes were to cease from the 29th of September last preceding. The vicar, being dissatisfied, entered an appeal against the commissioners' allotment at the Epiphany sessions, 1814, being within six calendar months from the date of the notice of the commissioners above-mentioned; this came on to be heard at the following Easter sessions, but was dismissed as being out of time. The questions was, from what period the "grievance commenced." The Court of Queen's Bench were of opinion, that the notice of the commissioners of the time from which the tithes were to cease was the commencement of the vicar's grievance, and therefore that the appeal being within six months from that period was in time. (*R. v. Justices of Gloucestershire*, 3 M. & S. 127; *Talfourd's Dick. Sessions*, 639; and see *R. v. Nockolds*, 3 Nev. & M. 334; 1 Ad. & Ell. 245.) See further as to what is a "thing done" in pursuance of an Act, *Smith v. Shaw*, 10 B. & C. 277; *Reg. v. Kelk*, 1 Q. B. 660.

By the 3 Geo. IV. c. 33, s. 7, (which related to remedies against the hundred, but now repealed by 7 & 8 Geo. IV. c. 27,) any person aggrieved by any act done under that Act might appeal, &c. Where a party so grieved applied to the proper sessions, and they, after hearing the case and evidence, dismissed the complaint, not on the merits, but on a supposed want of jurisdiction, the court held that this was an act done, against which an appeal would lie. But the opinion was founded on the peculiar provisions and language of that Act, and must not be considered as a precedent in any other case. (*R. v. Tucker*, 5 D. & R. 434; 3 B. & C. 544; see also *Blakemore v. Glamorgan Canal Company*, 3 Y. & J. 60; *R. v. St. Albans*, 3 B. & C. 698.)

Where by a local Act the management of the parish poor was vested in the churchwardens, overseers, governors and directors of the poor, and an appeal to them was given to any person thinking himself aggrieved by any thing to be done by virtue of the Act, and if the appellant should be not satisfied with their determination, then an appeal was given to the quarter sessions, and a parishioner having applied for relief against a rate to the churchwardens, overseers, governors, and directors, they, at a meeting, resolved to take no further notice of his application; it was held, as they had not come to any determination on the subject-matter of his complaint, the parishioner could not appeal to the quarter sessions, but that he ought to have first applied for a

3. To what Sessions.

"Act done."

"A determination."

3. To what Sessions.

After "order made or proceeding" had.

mandamus to compel the churchwardens, overseers, governors, and directors to hear the appeal. (*R. v. Justices of Kent*, 9 B. & C. 283.)

By the 13 Geo. III. c. 78, s. 19, (now repealed,) an appeal was given against orders of justices for stopping up roads, "to the parties aggrieved by any such orders or proceedings had," &c., and the question was, the precise period from which the grievance was to be estimated, and whether the *terminus à quo* for an appeal was to be reckoned from the time of the order or from the time of the actual stoppage in consequence of that order. The Court of Queen's Bench held, that an appeal to the sessions after the actual obstruction of the road was too late, the parties aggrieved having had notice of the order in sufficient time to have appealed to a previous sessions. (*R. v. Justices of Pembrokeshire*, 2 East, 213; see also *R. v. Justices of Hertfordshire*, 3 M. & S. 459.) Upon the same statute it was held, that the time for appealing ran from the time of making the order for stopping up the road and not from notice to the party aggrieved. (*R. v. Justices of Staffordshire*, 3 East, 151.)

Under the same statute, where two justices in a special sessions, on the 20th of June, made an order for a public footway to be diverted and turned, and on the 4th of July made another order for the old footway to be stopped up, and appeal was made at the next Michaelmas quarter sessions, the Midsummer quarter sessions having been holden on the 11th of July, the justices dismissed the appeal, conceiving that the time within which it was to be made was to be reckoned from the date of the first order, which was for diverting the way. But it was contended, in support of the motion for a mandamus to compel the justices to hear the appeal, that the grievance commenced only at the time of the order for stopping up the old footway, not from that of the order for making the new one, and of that opinion was the Court of Queen's Bench. (*R. v. Justices of Herts*, 3 M. & S. 459; *Talfourd's Dick's Sessions*, 637.)

"After order made or given."

After "adjudication and making of order."

Where a statute gives an appeal from an order for the payment of money upon giving notice "within six days after such order shall be made or given," the time for notice of appeal has been held to run from the making of the order, not from the service. (*Reg. v. Justices of Derbyshire*, 7 Q. B. 193; 14 L. J. M. C. 84.) Notice of an appeal against a bastardy order under the 7 & 8 Vict. c. 101, s. 4, must be given "within twenty-four hours after the adjudication and making of any order on the putative father, &c.," and the time must be calculated from the verbal adjudication and order made at the petty sessions, and not from the time of its being signed or service of the written order. (*Ex parte Johnson*, 3 B. & S. 947; 32 L. J. M. C. 193.)

In computing number of days Sunday is to be included.

Where a statute directs a proceeding to be taken within a certain number of days, Sunday is to be included in computing the number, though it be the last. (*Ex parte Simpkin*, 2 E. & E. 392; 29 L. J. M. C. 23.)

Next practicable sessions, what.

The "next" sessions in the literal sense is at times an impossible sessions. The parish officers must have a reasonable time allowed them to make the necessary inquiries that they may judge of the propriety of appealing or not. Thus, for example, before the 4 & 5 Will. IV. c. 76, where the removal of a pauper took place on the 5th of October, and the place to which the removal took place was sixty miles from the place where the sessions were held, and the sessions began on the 6th of October, the appellants were held entitled to pass over those sessions without entering the appeal, on the ground that it was impossible for them to lodge their appeal at those sessions, and the justices were bound to receive the appeal at the following sessions. (*R. v. Justices of East Riding of Yorkshire*, 1 Doug. 192.) Where the order of removal was served on Saturday, and the appellant's parish was thirty-seven miles from the place where the sessions were held, and the sessions were held on the following Tuesday, it was held that the appellants were entitled to

pass over those sessions without entering and respiting the appeal, and the justices were bound to receive it at the following sessions; (*R. v. Justices of Essex*, 1 B. & A. 210); though in an older case two days had been held to give sufficient time for considering whether there should be an appeal, (*R. v. Justices of Herefordshire*, 3 T. R. 504.), and four days were held sufficient in *R. v. Justices of Wilts* (2 Bott. 746, 6th ed.). Where the order of removal is served on a day within the time required by the practice of sessions for the giving of notice of appeal for the next sessions, the appeal is in time and must be received by the justices at the following sessions, as the next practicable sessions. (*Reg. v. Surrey*, 3 D. & L. 343; see *Reg. v. Justices of West Riding of Yorkshire*, E. B. & E. 713; 27 L. J. M. C. 269.) Where an order of removal was served on the 8th of April, and the next sessions were holden on the 15th of April, and by the practice of sessions eight clear days' notice of appeal was required, and the appeal was not entered in April, the justices were held bound to receive it at the following July sessions as the next practicable sessions; (*R. v. Justices of Kent*, 8 B. & C. 639); and the same decision was come to upon similar facts in *R. v. Justices of Devon*, *id.* 640, and *R. v. Justices of Southampton*, *id.* 641.

As to what is the next practicable special sessions for appealing against a poor rate, see *Reg. v. Trafford*, 15 Q. B. 200; *sub nom. Reg. v. Justices of Lancashire*, 19 L. J. M. C. 199.

The appellant cannot by his negligence or dilatory conduct, such as lying by and depriving himself of the power of giving an effectual notice of appeal or of sending grounds of appeal in due time, make the sessions impracticable which were in fact practicable. (*Reg. v. Justices of Sussex*, 4 B. & S. 987; 34 L. J. M. C. 69; and see *Reg. v. Severnoaks*, 7 Q. B. 136; 14 L. J. M. C. 92; *Reg. v. Peterborough*, 7 E. & B. 643; *Reg. v. West Riding of Yorkshire*, E. B. & E. 713; *Reg. v. Skircoat*, 2 E. & E. 185; 28 L. J. M. C. 224.) The case of *Reg. v. Surrey*, (3 D. & L. 343; 2 N. S. C. 155,) is not inconsistent with these cases, for in that case there was not time for the appellants to take the necessary steps to try the appeal at the next sessions, however well disposed and diligent the parties might have been, and it was therefore considered that the very next sessions were not in that case the next practicable sessions for the purposes of the appeal. (See *Reg. v. Justices of West Riding of Yorkshire*, E. B. & E. 713; 27 L. J. M. C. 268.) Where the next sessions might by diligence in the appellants have been made practicable, but, in consequence of their taking the full time allowed by the Poor Law Statutes to give notice of appeal and send grounds of appeal, have become impracticable, the appeal must be entered and respited at the next sessions in fact. (*Reg. v. Justices of West Riding*, *ubi sup.*)

"The Poor Law Amendment Act," 4 & 5 Will. IV. c. 76, ss. 79, 81, and the 11 & 12 Vict. c. 31, s. 9, have no relation to defining the time after service of the order of removal within which it is practicably possible for a receiving parish to decide whether they will appeal or submit to the order, or for fixing the maximum of delay, after which the sessions next in fact may be passed over as not the next practicable, or after which the appellant may demand an adjournment, but leave that matter as it stood under the statute 13 & 14 Car. II. s. 12. (*Reg. v. Justices of Sussex*, 4 B. & S. 966; 34 L. J. M. C. 69.) Therefore, now, if the next sessions begin within the twenty-one days or the thirty-five days, if advantage be taken of the contingent fourteen days under that Act supplemented by the 11 & 12 Vict. c. 31, s. 9, those sessions, upon an application to them to enter and respite the appeal, have a right to determine whether the appellants have been guilty of unreasonable delay, and on that account to refuse them an adjournment; and if they so found, they had the right to refuse an adjournment. (*R. v. Justices of Sussex*, *ubi sup.*, overruling *R. v. Justices of Suffolk*, 4 A. & E. 319; 5 L. J. M. C. 3; and *R. v. Justices of Herefordshire*, 8 Dougl. 638.) In that case the order of removal was served on the 30th of August, a

3. To what Sessions.

Entry and respite when necessary.

Respite discretionary.

3. *To what Sessions.*

copy of the depositions was applied for, and the copy delivered on the 19th of September. Notice of intention to commence and enter an appeal at the next sessions was sent on the 1st of October. The sessions for the Eastern division of Sussex began on the 15th of October, and the sessions for the Western, to which the appeal belonged, began on the 18th of October. The time for notice of an appeal was, by the practice of the county, eight days. No grounds of appeal were delivered. On the 18th of October the appellants applied at the quarter sessions at Chichester to have the appeal entered and respited as of right. The sessions refused on the ground that these were practicable sessions for the appellants to have tried, and that as it was through their own laches that they were not prepared, the sessions refused to adjourn it. Upon an application for a mandamus to the justices to compel them to enter continuances and hear the appeal, the court discharged the rule on the grounds that the appellants derived no right to assume that it was not practically possible to prepare for trial in less than twenty-one days, with an addition of fourteen days referred to by the 4 & 5 Will. IV. c. 76, and 11 & 12 Vict. c. 31, s. 9, and that, according to the true construction of 4 & 5 Will. IV. c. 76, s. 81, the delivery of grounds of appeal with a notice of appeal is as valid for all purposes as a delivery fourteen days at least before the sessions began. Therefore, as the notice of appeal was given a reasonable time before the sessions, and the grounds of appeal might have been given with it, the sessions were not bound to adjourn it, but the adjournment lay in their discretion; and further, even if the grounds of appeal must be delivered fourteen clear days before the sessions begin, and the matter was not left by law to the discretion of the justices, still the rules of practice for the sessions held for the Western division of the county were valid, and the appellants, according to those rules, might have delivered the grounds of appeal with the notice of appeal fourteen clear days before those sessions began, and so the refusal of adjournment was right.

Overseers' accounts.

Where overseers' accounts, allowed by two justices, were delivered to the successors so late that they could not appeal to the next sessions, it was holden, that an appeal to the next practicable sessions was in time, and that the justices might then respite the appeal, though the respondents objected to the delay. (*R. v. Thackwell and others*, 4 B. & C. 62; 6 D. & R. 61; *R. v. Watts*, 7 Ad. & E. 461; 2 Nev. & Per. 367.)

The next sessions for appealing against an overseer's accounts, are the next practicable sessions after the accounts have been published; that is, after they have been deposited with the churchwardens and overseers for public inspection, and the fact of depositing *bond fide* made known. (*R. v. Watts*, 7 Ad. & Ell. 461; 2 Nev. & Per. 367.)

We have already stated, *ante*, p. 223, that where an Act directs an appeal to be to the "next sessions," it in general means the next practicable sessions.

Only one intervening day between the publication of a poor rate and the next immediate quarter sessions is not sufficient for an effectual notice of appeal. (*R. v. Justices of Sussex*, 15 East, 206; and *R. v. Justices of Dorsetshire*, 15 East, 200.)

IV. Preliminary Steps before Trial.

And herein of—

1. *The Notice of Appeal*, 229.
2. *The Recognizance*, 236.
3. *The Entry of the Appeal*, 237.
4. *The Effect of not taking necessary preliminary steps*, 237.

(1.) NOTICE OF APPEAL.

4. Preliminary steps before Trial.

What it is.—Notice of appeal is notice of what one court has decided which authorises another court to proceed, (per *Erle, J.*, 5 D. & L. 580,) and is said to be in the nature of a declaration in an action. (*R. v. Justices of Suffolk*, 1 B. & A. 640, per *Holroyd, J.*)

What.

When necessary.—The statute which allows an appeal usually directs that a notice of the party's intention to appeal shall be previously given either to the justices or to the complainant, or to both; and it would seem that where a power of appeal is given simply without any condition being mentioned in the statute, notice of appeal should be given; *Ex parte Blues*, 5 E. & B. 291; 24 L. J. M. C. 138;) but where a different condition of appeal is expressly given, that would seem to exclude the necessity of notice. (*R. v. Justices of Essex*, 4 B. & A. 276, *infra.*)

When necessary

The 12 & 13 Vict. c. 45, s. 1, after reciting that "Whereas, in cases of appeal to courts of general or quarter sessions, it is expedient that the law should be more uniform," enacts, "That in every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace, fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or practice of any court or courts to the contrary notwithstanding."

Baines' Act.

Section 2. "None of the provisions hereinbefore contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a *summary conviction*, or against an *order of removal*, or against an *order*, under any statute relating to *pauper lunatics*, or against an *order in bastardy*, or against any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of *Excise* or *Customs*, stamps, taxes, or post office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted."

As to notices of appeal in the excepted cases, see tit. "*Conviction*," "*Poor*," "*Bastardy*," "*Excise*."

When the statute expressly requires a notice of appeal to be given, no practice of the sessions can do away with the necessity of such notice as prescribed by the Act. (*R. v. Justices of Lincolnshire*, 3 B. & C. 548; 5 D. & R. 347; *R. v. Justices of West Riding of Yorkshire*, 4 B. & Ad. 685.) So, on the other hand, the sessions have no right to introduce a new condition of appeal which is not in the Act of Parliament. (*R. v. Justices of Staffordshire*, 4 A. & E. 842.) Thus, where an order of sessions required, "that all notices of appeal made to the court shall be given by the parties eight days before the sessions begin," and a person convicted under 55 Geo. III. c. 29, entered into the recognizance to prosecute his appeal required by the statute, which statute required no notice, it was held that the order of sessions required the eight days' notice to be given only in those cases where some notice is prescribed by the statute; and that the recognizance was equivalent to notice. *Holroyd, J.*, added, "It appears that if the conviction is made more than six days before the sessions, the party grieved *must* appeal to the next sessions. Suppose it, then, made seven days before the sessions, he *must* appeal to those sessions, and yet cannot give the notice prescribed by the sessions." (*R. v. Justices of Kent*, 6 M. & S. 251.)

When not.

Therefore, on a rule for a *mandamus* to hear the appeal of a defendant against the conviction of a magistrate under the (now repealed) 50 Geo. III. c. 48, s. 4, called "The Stage Coach Act," by which the defendant was convicted in a penalty for carrying more luggage than is allowed by the Act; the defendant had, within fourteen days, entered into a recognizance, as required by the Act, to prosecute his appeal against the conviction, and had given notice of appeal to the magistrate but not to the informer; by the practice of the sessions for the county

4. *Preliminary steps before Trial.*

of *Essex*, eight days' notice of appeal is required to be given, in all cases, by the appellant to the respondent; it was objected at the sessions that the practice not having been complied with in this particular, the appellant was not entitled to be heard, and the sessions allowed the objection, and dismissed the appeal; it was contended that the entering into the recognizance before the magistrate dispensed with the necessity of giving notice of appeal. *Sed per Bailey, J.*, "I am of opinion that the sessions ought to have heard this appeal. Wherever the legislature has deemed a notice of appeal to be necessary, they have in express terms prescribed such notice; but here, by the 50 Geo. III. c. 48, s. 25, it is expressly provided, 'that any party aggrieved by the conviction, who shall within fourteen days enter into a recognizance to appear at the next sessions, shall be at liberty to appeal at the next general quarter sessions of the peace to be holden for the county.' The Act of Parliament, therefore, does not require any notice of appeal; and inasmuch as the party convicted had entered into a recognizance to prosecute his appeal at the next sessions, the informer must have known that it was the intention of the party convicted to appeal, and any further notice was therefore unnecessary. I think, therefore, that this rule ought to be made absolute." The rule was accordingly made absolute. (*R. v. Justices of Essex*, 4 B. & Ald. 276.)

These cases must now be taken subject to "Baines' Act." (*Supra*, p. 229.)

Baines' Act.

When notice to be in writing.—The 12 & 13 Vict. c. 45, s. 1, enacts that "Such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their attorney, on his, her, or their behalf."

In what cases that Act does not apply, see sect. 2, *ante*, p. 229.

Inasmuch as a printed bill of parcels has been held to be a note or memorandum in writing within the 17th section of the statute of frauds, (*Schneider v. Morris*, 2 M. & S. 286, recognised in *Durrell v. Evans*, 1 H. & C. 174; 31 L. J. Ex. 337,) a printed notice of appeal would probably be held to be in writing within the meaning of the above statute. (See also *Reg. v. Fletcher*, L. & C. 180; 31 L. J. M. C. 206.)

Irrespective of the above statute or any special enactment, the notice need not have been in writing. (*R. v. Justices of Salop*, 4 B. & Ald. 626; *R. v. Justices of Huntingdon*, 4 N. S. C. 101; *R. v. Justices of Surrey*, 5 B. & Ald. 539; 1 D. & R. 160.)

Time of notice.—The 12 & 13 Vict. c. 45, s. 1, requires fourteen clear days' notice of appeal at least to be given. Before this section, and in cases where it is inapplicable in the absence of special enactment to fix the time of notice, it was deemed necessary that there should be a reasonable notice of which the sessions were to be the judges, (*R. v. Justices of Surrey*, 1 Dowl. & R. 160; 5 B. & Ald. 539; *R. v. Watts*, 7 A. & E. 470,) subject to a kind of visitatorial jurisdiction exercised over their interpretation by the Court of Queen's Bench. (*R. v. West Riding of Yorkshire Justices*, 5 B. & Ald. 667; *R. v. Wiltshire Justices*, 10 East, 404; *R. v. Lancashire Justices*, 7 B. & C. 691; but see *Crompton, J.*, in *R. v. Derbyshire Justices*, 22 L. J. M. C. 33; see *post*, pp. 238, 239.)

Notice given on a Sunday.

Service of notice of appeal would probably be deemed "process" within the operation of "The Lord's Day Act," (29 Car. II. c. 7, s. 6,) and be void to all intents and purposes, if made on Sunday. (See *Reg. v. Justices of Middlesex*, 5 D. & L. 580; 17 L. J. M. C. 111; *R. v. Justices of Huntingdonshire*, Cald. 283; *Reg. v. Justices of Lancashire*, 16 Jur. 1067.) But transmission by the post is not service within the 29 Car. II. c. 7, s. 6; (*Reg. v. Inhabitants of Leominster*, 2 B. & S. 391; 31 L. J. M. C. 95;) and under some statutes it may be sent by post, (*eg.* 14 & 15 Vict. c. 105, s. 10,) against an order of removal, see "*Poor.*" And the service of such notice when made by post is deemed to be made when, according to the regular and usual course of post, it would

Service of notice what.

reach the hands of the parish officers. (*Reg. v. Slawstone*, 18 Q. B. 388 ; 21 L. J. M. C. 145.)

The number of *clear days* or days *at least* must be computed exclusively of the day of serving the notice and of the first day of sessions. (*R. v. Herefordshire Justices*, 3 B. & A. 581 ; *Touch v. Empsey*, 4 B. & A. 522 ; *R. v. Shropshire Justices*, 8 A. & E. 173.)

An admission of due service of notice of appeal is evidence for the justices that the notice was served in due time, but the respondent is not precluded from disputing the fact of due notice, and the justices may find the fact or not as the evidence leads them. (*Reg. v. Justices of Gloucester*, 16 L. J. M. C. 57.)

See also as to the time of the notice with reference to the sessions to which the appeal lies. (*Ante*, p. 223.)

Notices to be signed.—Notices, within the 12 & 13 Vict. c. 45, must be signed by the person or persons giving the same, or by his, her, or their attorney, on his, her, or their behalf (s. 1).

As to what are within the Act, see s. 2, *ante*, p. 229.

Notice by whom, and to whom given.—The statute points out the parties by and to whom the notice of appeal is to be given. If several have a joint grievance they may join in giving the notice. (See *R. v. White*, 4 Term Rep. 771 ; *R. v. Justices of Sussex*, 15 East, 206.) And where three defendants were convicted on a joint hearing, and gave a joint notice of appeal, it was held sufficient, though three separate convictions were returned to the sessions. (*R. v. Oxfordshire Justices*, 4 Q. B. 177 ; 12 L. J. M. C. 40.)

The general rule *qui facit per alium facit per se* applies to the giving of notice of appeal, unless the statute expresses or implies that is to be a personal act ; and therefore, ordinarily, a man may give a notice by means of his agent or attorney. (*Reg. v. Justices of Middlesex*, 20 L. J. M. C. 42 ; *Reg. v. Carew*, *id.* 44 ; *R. v. Justices of Huntingdonshire*, 4 N. S. C. 101 ; 19 L. J. M. C. 127.) And by the general Act, 12 & 13 Vict. c. 45, in the cases to which it applies, the signature of the attorney of the party giving the notice is expressly made sufficient. But because service by the attorney for the party would be good, it does not follow that service upon the attorney of the respondent would have the same effect unless the statute expressly so enacts. (*R. v. Inhabitants of Kimbolton*, 6 A. & E. 603 ; *Reg. v. Justices of Middlesex*, 20 L. J. M. C. 44.)

On appeal against a poor rate, because any other person is rated at a greater or less sum than he ought to be, or for any cause which may require an alteration in the rate, the appellant must give notice to the other person interested in the event of the appeal under the 41 Geo. III. c. 23, s. 4 ; and where the appellant gave notice of appeal, and several grounds of appeal, amongst which was one under the above section, which required notice of appeal to be given to the persons therein named, but they had been given no such notice, the sessions were held to be right in treating the parties named as if they were respondents in the appeal, and in refusing to hear the appeal on the ground that no notice had been given to them, or to go into the other grounds of appeal which did not require notice, notwithstanding the appellants offered to abandon the grounds of appeal which required notice. (*Reg. v. Justices of Cambridgeshire*, 1 L. M. & P. 47 ; 19 L. J. M. C. 130.) It is for the sessions to put a construction upon a notice and grounds of appeal, and decide whether it is such a notice as requires to be served upon the persons interested, and if they put a possible construction upon it, the court of Queen's Bench will not interfere with their decision. (*Ib.* ; *Reg. v. Justices of Kesteven*, 3 Q. B. 810 ; 13 L. J. M. C. 78 ; overruling *Reg. v. Justices of Carnarvonshire*, 2 Q. B. 325 ; see *post*, 233.)

4. *Preliminary steps before Trial.*

Evidence.

How signed.

By and to whom given.

By attorney.

To attorney.

To persons underrated.

An inclosure Act gave to the party aggrieved a right of appeal for

"Parties concerned."

4. Preliminary steps before Trial.

anything done in pursuance of that Act, or of the (recited) General Inclosure Act, on giving to the commissioner *and to the parties concerned ten days' notice in writing*: notice of appeal against an order ascertaining the boundaries between two townships was served on the commissioner, but not on the lady of the manor, who was a party materially interested in the question, because the commissioner had (as was alleged) committed a great error in ascertaining the boundaries of the parish to be inclosed, and had included within his boundary, a considerable part of an adjoining manor belonging to a Mrs. S. At the sessions it was proposed to respite the hearing of the appeal which had been entered; but as the notice was insufficient, none having been given to the lady of the manor, the justices determined it could not be entered or heard. A *mandamus* being applied for to enter continuances and to hear the appeal, the Court of Queen's Bench were unanimous in opinion that the justices had acted right, and the *mandamus* ought not to issue. The notice of appeal was insufficient. The party who appeals is bound to give eight days' notice by the General Act to the commissioner, by the Local Act ten days' notice to the commissioner, *and also to the parties concerned*. The latter, therefore, so far supersedes the provisions of the former; and it would be a great hardship if the party concerned were bound by a notice to the commissioner alone. "Party concerned" includes parties directly interested in the soil, which in this case the lady of the manor was, and therefore entitled to notice, which she had not received. (*R. v. Justices of Lancashire*, 1 B. & A. 630.)

Persons affected.

But where notice of appeal was required to be given "to the person who is intended to be or who may be affected by such appeal" under the Mersey Dock Consolidation Act, 1858 (21 & 22 Vict. c. 92) s. 335, and under sect. 95 of the same statute a person had been convicted by justices upon the complaint of the owners of a vessel, of negligently causing damage to the vessel, and such person appealed under sect. 335, it was held that service of the notice of appeal upon one of the registered owners of the vessel was service upon all, and entitled the appellant to have the appeal heard. (*Reg. v. Recorder of Liverpool*, 31 L. J. M. C. 127.)

"To justices."

Where a statute required that the notice should be given to the convicting justices, it was held that it must be given to all of them; (*R. v. Justices of Cheshire*, 11 Ad. & Ell. 139; 3 Per. & D. 23, n., overruling *R. v. Justices of Staffordshire*, 4 Ad. & Ell. 842; *R. v. Silfiant*, *id.* 354;) and this, although at the time of giving the notice the conviction had in fact been signed only by one justice, to whom the notice had been given; there being no proof that the conviction so signed was communicated to the appellant, before he gave the notice, so that he might have been misled thereby.

See further, *post*, p. 255, as to the entering and respiting.

Grounds of appeal.

Contents of Notice.—If the statute does not expressly require it, the notice need not state the grounds for the appeal; otherwise it must, and this in a specific manner, so that the objections raised may be known to the justices and parties concerned before hearing the appeal. (See *R. v. Justices of Westmoreland*, 10 B. & Cres. 226.)

But now in all cases within the 12 & 13 Vict. c. 45, s. 1., (see *ante*, p. 229,) the appellant or appellants must specify the grounds of appeal in the notice of appeal, and, on the trial of any appeal, may not go into or give notice of any other ground of appeal besides those set forth in the notice of appeal.

Where, however, the facts which constitute the ground of appeal are more within the knowledge of the respondents than the appellants, the notice need not be so explicit. (*R. v. Justices of Carnarvonshire*, 1 G. & D. 423.) This case has, however, been overruled as to the point decided. (See *Reg. v. Justices of Kesteven*, 3 Q. B. 810; 13 L. J. M. C. 78.)

A notice of appeal against a conviction under the 5 Geo. IV. c. 83, s. 4, of a party as a rogue and vagabond, for obscenely exposing his

person in a place of public resort, with intent to insult a female, stating as the grounds of such appeal, that the appellant was not guilty of the said offence, is sufficient, the appeal being against defendant's conviction on the merits, and not a mere matter of form. (*R. v. Justices of Newcastle-upon-Tyne*, 1 B. & Ad. 933.)

It is for the sessions generally to decide whether the form of notice is sufficient as a matter of fact. (*Reg. v. Eyre*, 7 E. & B. 609; 26 L. J. M. C. 125; see *ante*, p. 231.) And where the notice of appeal against a poor-rate went on to say that the appeal would not be tried at the next sessions but merely entered or respited, the sessions, if they deem such notice to be a reasonable notice of trial, may refuse to respite, and insist upon the appeal being tried, and, if the appellant is not prepared, or refuses to try, may dismiss the appeal. The object of the notice of appeal is to give the opposite party notice that the appellant is aggrieved by reason of the judgment, and therefore should describe it with sufficient accuracy to point out that judgment without a possibility of mistake. (*R. v. Denbighshire Justices*, 9 Dowl. P. C. 509.) But if justices refuse to hear an appeal on a preliminary objection which the court can see to be a matter of law and not of fact, as on the ground of misdescription of the conviction or order appealed against in the notice of appeal, the court will grant a mandamus to compel them to hear it, if there has been no variance, or, at all events, one which could not be a material one, or calculated to mislead. (*Reg. v. Justices of Oxfordshire*, 4 Q. B. 177; 12 L. J. M. C. 40; see also *Reg. v. Recorder of Liverpool*, 20 L. J. M. C. 35; *Reg. v. Bucks Justices*, 4 E. & B. 259; 24 L. J. M. C. 15.)

A notice of appeal is not vitiated because it contains an erroneous statement, if such statement can be treated as surplusage which has not or ought not to have misled the other party to the appeal. Where an appeal is laid against an order of removal from within a borough made by justices of the borough, being also county justices, it ought to be to the quarter sessions for the borough; but if by mistake the notice of appeal states that the appellants meant to appeal to the county sessions, it may be nevertheless a good notice for the borough sessions, if the party giving the notice discover the error before going to the county sessions, and inform the other party that it must be taken as notice for the borough, for in such a case the naming of the county sessions would be deemed erroneous surplusage which could not mislead. (*Reg. v. Recorder of Liverpool*, 15 Q. B. 1070; *Reg. v. Justices of Bucks*, 4 E. & B. 259, note; 24 L. J. M. C. 15; *Reg. v. Recorder of Leeds*, 3 E. & B. 561; 30 L. J. M. C. 86.) But if the mistake has been such as to mislead—as, for instance, if both parties have appeared at the wrong sessions named in the notice, and the appellants treated it as an appeal to those sessions, they cannot then say that they have made a mistake, and did not intend to try at those sessions, or deny that the respondents have been misled. (*Reg. v. Justices of Salop*, 4 E. & B. 257; 24 L. J. M. C. 14.)

Sometimes a statute requires the justices convicting to make known to the party convicted his right to appeal, and when that is so, it must be taken to mean that the justices should inform him of the necessary steps to be taken to enforce that right. Therefore, where such a statute requires a notice in writing to the justices, and a recognizance to be entered into, and the defendant only enters into the recognizances, the necessity of notice in writing is dispensed with. (*R. v. Recorder of Leeds*, 4 T. R. 583.)

Grounds of appeal.—Whether the statement of the grounds of appeal in the notice contains sufficient particularity is for the sessions to determine; and where they have decided it to be insufficient to let the appellants into their case, the Court of Queen's Bench will not grant a mandamus to enter continuances and hear the appeal. (*R. v. The Justices of Kesteven*, 3 Q. B. 810; 13 L. J. M. C. 78, overruling *Reg. v. Justices of*

4. Preliminary steps before Trial.

Sufficiency of notice.

Surplusage.

Sufficiency of grounds of appeal.

4. Preliminary steps before Trial.

Carnarvon, 2 Q. B. 325, and *R. v. Justices of West Riding*, *id.* 331; *ante*, p. 231.)

Where the grounds of appeal must, by statute, be stated in the notice, none besides those fairly included in its terms can be entered into at the sessions, or in the Court of Queen's Bench, though apparent on the face of a case set up. (*R. v. Inhabitants of Stafford*, 1 Per. & D. 414; 10 A. & E. 417.)

A statute which prevents a party from going into or giving evidence, on the hearing of the appeal, of any other grounds of appeal than those set forth in his notice, extends to objections apparent upon the face of the order so appealed against. (See *R. v. Inhabitants of Witherwick*, 6 Ad. & Ell. 273; *Rex v. Inhabitants of Bromyard*, 8 B. & C. 240; 2 M. & R. 280.)

If the appellant unnecessarily states in his notice, as causes of appeal, a fact or ground which does not exist, the court of sessions ought to adjourn the appeal, if they think the respondents have been misled by the terms of the notice, or otherwise to hear it.

Fresh statement of grounds.

It has been decided under the 4 & 5 Will. IV. c. 76, (The Poor Law Act,) that where an appeal has been simply entered and respited at the sessions, a fresh statement of the grounds of appeal may be served. (*R. v. Justices of Derbyshire*, note (b), to *R. v. Kimbolton*, 6 Ad. & E. 612.) But where, on the hearing of an appeal against an order of removal, the bench, being equally divided, adjourned the case to the next sessions, the court held, that the appellants could not after such adjournment serve a fresh statement of their grounds of appeal. (*R. v. Arledon*, (*Inhabitants of*), 11 Ad. & E. 87; 3 P. & D. 93; *post*, "Poor;" *Reg. v. Eyre*, 7 E. & B. 619; 26 L. J. M. C. 125.)

Baines' Act.

The 12 & 13 Vict. c. 45, s. 3, after reciting that "a statement of the grounds of appeal when required by this or any other statute, is for the purpose of enabling the party receiving it to enquire into the subject of such statement, and if need be to prepare for trial," enacts, "that upon the hearing of any appeal to any court of general or quarter sessions of the peace, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to enquire into the subject of such statement, and to prepare for trial."

Objections as to defect in form not to be allowed, &c.

Amendment of grounds of appeal.

By 12 & 13 Vict. c. 45, s. 9, the decisions of the court of general or quarter sessions of the peace, upon the hearing of any appeal as to the sufficiency of the statement of any ground or grounds of appeal, shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari or mandamus or otherwise: "Provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement as to such court shall appear just and reasonable."

Decisions of sessions final.

By the same section, the decisions of the court of general or quarter sessions of the peace, upon the hearing of any appeal as to the amending or refusing to amend any statement of any ground or grounds of appeal, shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari, or mandamus or otherwise.

Frivolous grounds of appeal.

The 12 & 13 Vict. c. 45, s. 4, enacts, "That if in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall, in the opinion of the court determining the appeal, be frivolous or vexatious, such appellant or appellants shall be

liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal." (See also tit. "Poor.")

Where a statute gives a right of appeal against acts done in pursuance thereof to parties aggrieved by such acts, the notice of appeal must state that the appellant is *a party aggrieved* by the act of which he complains, or state that from which it follows of necessity that he is so. (*R. v. Justices of West Riding of Yorkshire*, 1 M. & R. M. C. 215; *R. v. Justices of Essex*, 7 D. & R. 658; 3 D. & R. M. C. 483; 5 B. & C. 431; *R. v. Blackawton*, 10 B. & C. 792; *R. v. Bond*, 6 Ad. & Ell. 905.) In a notice of appeal against an order for stopping up a footway, (under the now repealed 55 Geo. III. c. 68, s. 3,) it sufficiently appears that the appellant is the party aggrieved, if it be stated that he and his tenants, occupiers of a farm and lands near the said way, and who have heretofore used, and have a right to use it, and also other persons, and the public, will be put to great inconvenience. (*R. v. Justices of West Riding of Yorkshire*, (in the matter of *Bower*), 4 B. & A. 685; 2 Nev. & M. 390.)

If the notice be given by or to parish officers, it seems that they may be described as churchwardens and overseers, without naming them. (*Talf. Dick. Sessions*, 645.)

But if the appeal is given to the holder of a particular office, the notice must state the appellant to be such holder. (*Id.*)

As to notices of appeal in *particular* cases, see the various titles throughout this work.

See the form of the notice in general, *post*, No. 1.

Abandoning Notice.—It seems that a notice of appeal may be abandoned and a fresh one given, provided it is in proper time, supposing it to be the first notice; (*R. v. Justices of Middlesex*, 9 Dowl. 163; per *Patteson, J.*, *R. v. Justices of West Riding of Yorkshire*, 3 T. R. 776; *Paley on Conv.* 356, ed. 5, by *Macnamara*; and see *R. v. Justices of Cheshire*, 1 Dowl. N. S. 570;) but after the appeal has been entered and respited, and thus acquired a certain character, it cannot be abandoned, and a fresh notice given changing the parties and grounds of appeal. (*Reg. v. Eyre*, 7 E. & B. 619; 26 L. J. M. C. 125.) So, therefore, where an appeal was given to the borough sessions with the further appeal, if the party were dissatisfied with county quarter sessions, the party is confined to the same grounds which were taken at the borough sessions, and cannot be heard on any fresh ones. (*R. v. Justices of Suffolk*, 1 B. & A. 640.)

In cases of removal of paupers, by virtue of the words of 4 & 5 Will IV., c. 76, s. 81, the grounds of appeal may be changed at any time before the fourteen days before the first day of the sessions at which the appeal is intended to be tried. (*Reg. v. Inhabitants of Kendal*, 1 E. & B. 492; 28 L. J. M. C. 110; *Reg. v. Justices of Derbyshire*, 6 A. & E. 612 n. (b); 7 L. J. M. C. 91; see *ante*, p. 234.)

Where several grounds of appeal against a poor-rate had been given, one of which was construed by the sessions to mean that certain persons therein mentioned were underrated, and no notice of appeal had been given them, the sessions refused, therefore, to hear the appeal. The appellant offered to abandon that ground of appeal, and proceed upon the other grounds, but the sessions refused to permit that course to be adopted. The Court of Queen's Bench refused to grant a *mandamus* to compel the sessions to hear the appeal. (*Newmarket Railway Co. v. Churchwardens, &c., of Bullingham*, 4 N. S. C. 87; 19 L. J. M. C. 131.)

Where a notice of appeal against a poor-rate was given to a sessions, and contained as one of the grounds of appeal that certain persons enumerated in a schedule were improperly rated, but the notice had not been served upon such persons, and the sessions refused to respite the

4. Preliminary steps before Trial.

Costs.

When notice given by a party aggrieved.

When by or to parish officers.

When to holder of an office.

Abandoning notice.

Abandoning grounds of appeal.

4. *Preliminary steps before Trial.*

appeal for the purpose of service of such notice upon the persons enumerated, but were ordered to do so by a rule of the Court of Queen's Bench, and the appellant then gave a second notice, omitting the greater part of the parties to the first appeal, by leaving out the schedule, and thereby altering the character of the appeal, the sessions were held to be right in dismissing the appeal, on the ground that this was a fresh notice, which changed the appeal, and made it a fresh appeal which they were not commanded to hear. (*Reg. v. Eyre*, 7 E. & B. 619; 26 L. J. M. C. 125.)

(2.) THE RECOGNIZANCE.

Recognizance.

It is required, in many cases, that the party appealing shall enter into a recognizance with sureties conditioned to try the appeal, and to abide the judgment of the court thereon, and to pay such costs as shall be awarded, and the entry into such recognizances becomes a condition precedent to the right to have the appeal heard. (*R. v. Justices of Lincolnshire*, 3 B. & C. 548.)

The terms in which this recognizance is to be given must depend upon the statute requiring it. (See, for an instance, 7 & 8 Vict. c. 101, s. 4; 8 Vict. c. 10, s. 3.)

It is sufficient if the recognizance be verbally acknowledged within the time fixed by the statute for entering into it, and it may be perfected afterwards (*R. v. Justices of St. Albans*, 8 A. & E. 932; 1 Per. & D. 148) by entry on the roll. (*Hall v. Wingfield*, Hob. 195.)

Forthwith.

Where the statute requires that the recognizance shall be entered into "forthwith" after notice of appeal, it must be entered into within a reasonable time after such notice. (*R. v. Justices of Worcester*, 7 Dowl. 789.)

Where the recognizance was required to be entered into as above, but was not entered into until nine days after the notice was given and no cause was assigned for the delay, it was held that the recognizance was entered into too late. (*Id.*)

Where the statute required notice of appeal to be given within twenty-four hours after the order made, and also a recognizance to be made within seven days, the justice before whom the recognizance is sought to be taken cannot decide upon the validity of the notice, but must take the recognizance irrespective of the notice. (*Re Carter*, 24 L. J. M. C. 72, per Crompton, J.)

Notice of recognizance.

Notice of recognizance is sometimes required as a condition precedent to the allowance of the appeal. (See tit. "Bastardy.")

An admission by the respondent of service of notice does not preclude him from taking the objection that it was not served in due time. (*R. v. Justices of Gloucestershire*, 16 L. J. M. C. 57.) But such an admission is evidence for the justices of the fact of due notice.

See form of recognizance, *post*, p. 273; and as to recognizances in general, *post* tit. "Recognizance," Vol. V.

By parish.

A recognizance required to be entered into by a parish may be entered into by an inhabitant on behalf of himself and the other inhabitants prosecuting the appeal. (See *R. v. Abergele*, 5 A. & E. 795.)

By a corporation.

There seems to be some doubt whether a corporation can, strictly speaking, enter into a recognizance, though this difficulty is in practice evaded by one or more members of the body entering into one for it. (*Cortis v. Kent Waterworks Company*, 7 B. & C. 330; *Reg. v. Mayor &c., of Manchester*, 7 E. & B. 453; 26 L. J. M. C. 65.)

Amendment of recognizances and substitution of fresh recognizances.

By 12 & 13 Vict. c. 45, s. 8, after reciting that "the statutes giving a right of appeal against orders or summary convictions frequently require a recognizance or recognizances to be entered into as a condition of such appeal, and appellants are liable to be prevented from trying their appeals upon the merits, in consequence of imperfections in the taking of such recognizances: It is enacted, That where any

recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances to be entered into before such court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any statute or statutes for that purpose."

4. *Preliminary steps before Trial.*

And the decisions of the court or general quarter sessions of the peace upon the hearing of any appeal as to the substitution of any new recognizance or recognizances as aforesaid shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari* or *mandamus* or otherwise. (12 & 13 Vict. c. 15, s. 9.)

Decisions of sessions final.

(3.) ENTERING OF APPEAL.

Before trial, and within the time limited by the practice of the sessions, the party appealing must enter the appeal with the clerk of the peace.

Entry and petition of appeal.

As to entering and respiting appeals, see *post*, 255.

(4.) EFFECT OF NOT TAKING NECESSARY PRELIMINARY STEPS.

If the appeal, as is usually the case, is given only on certain conditions, such as the giving notice, entering into recognizance, or the like, the sessions cannot enter or receive the appeal, or otherwise deal with it, if such conditions have not been complied with; and if dismissed for such reason, the right of appeal is gone, and cannot be renewed at any other sessions. (*Reg. v. Justices of Lancashire*, 8 E. & B. 563; 27 L. J. M. C. 161; *R. v. Justices of Oxfordshire*, 1 M. & Sel. 446; *R. v. Justices of Carnarvon*, 4 B. & A. 86; *R. v. Lambeth*, 3 D. & R. 340; 2 D. & R. M. C. 26; *R. v. Bond*, 6 Ad. & Ell. 905; *Paley on Conv.* 5th ed. by Macnamara, 340—346.)

Effect of not taking necessary preliminary steps.

Where a conviction on 16 Geo. III. c. 30, made the 13th July, was appealed against to the next *Michaelmas* sessions, and the party entered into a proper recognizance, but neglected to give any notice of appeal, conformably to the appeal clause, which gave an appeal to the sessions next after twenty-one days from the conviction, "the appellant giving six days' notice," which last words were considered as imperative, and not merely directory, the justices at the first sessions adjourned the appeal, and at the following sessions it was dismissed on the objection of want of notice, and it was held by the Court of Queen's Bench, that the want of notice was a decisive objection to the first appeal, and that the sessions had not even authority to adjourn it on account of its never having been properly entered; for the court said, the sessions having no jurisdiction for want of notice could not acquire to themselves a jurisdiction by an act of their own; the power of adjournment is only where the sessions cannot conveniently hear the appeal after it has been *duly* entered. (*R. v. Justices of Oxfordshire*, 1 M. & S.

4. *Preliminary steps before Trial.*

448; see *R. v. Justices of Lincolnshire*, 5 D. & R. 347 3 B. & C. 548.)

And upon an application to the Court of Queen's Bench, for a *mandamus* to the sessions to hear an appeal, it must appear that the application to enter the appeal accordingly was made at the sessions within the time fixed by the rules and the practice of the sessions. (*Reg. v. Justices of Warwickshire*, 6 Q. B. 750.)

If an appeal has been entered by the clerk of the peace in a wrong name, by which the appellants are made to appear to be the guardians of a union, instead of the churchwardens and overseers of a parish; if the sessions refuse to alter the entry, it cannot be treated as an appeal of the parish officers; and if the court of quarter sessions refuse to hear the appeal, at the instance of the parish officers, the Court of Queen's Bench will not compel them to do so. (*Reg. v. Justices of Leicester*, 3 N. S. C. 1.)

Lex non cogit ad impossibilia.

But if the performance of the condition, such as the giving of notice to the respondent is made impossible by the act of God, in that the respondent has died before the time for giving notice had expired, the appellant is excused, and the appeal must be heard, notwithstanding the non-performance of such condition precedent. (*Reg. v. Justices of Leicestershire*, 15 Q. B. 88; 19 L. J. M. C. 209.)

Rules and practice of sessions.

Where there is a reasonable rule of the sessions and a settled practice upon it with reference to the time for the entry of appeals, the sessions will not be compelled to hear an appeal which they have refused to hear on the ground that it was not entered in due time, but if the rule is unreasonable, or the practice indistinct and unsettled, a *mandamus* to them to hear will be granted. (*Reg. v. Justices of Derbyshire*, 22 L. J. M. C. 31, per *Crompton*, J.) But the respiting of an appeal duly entered is within their jurisdiction according as justice may appear in each case according to their judgment to require, and the Court of Queen's Bench will not interfere with the exercise of that discretion, though it may think that the circumstances showed that the judgment of the sessions was unwisely exercised. (*R. v. Skircoat*, 2 B. & E. 185; 28 L. J. M. C. 224; *R. v. Justices of Sussex*, 4 B. & S. 987; 34 L. J. M. C. 69.)

The Court of Queen's Bench has authority to interfere for the purpose of seeing that no illegal practice prevails at the sessions to prevent the hearing of an appeal, and has gone so far as to interfere by *mandamus* to the sessions to compel them to erase an erroneous entry on their records of an appeal which had been procured by fraud. (*Reg. v. Justices of West Riding*, 5 Q. B. 1; *Reg. v. Justices of West Riding, Yorkshire*, 5 B. & Ad. 667.) In the former case, on notice of an order removing a pauper from A to B, the overseers of B gave notice of appeal which they afterwards countermanded, reserving the right to appeal when the paupers should be actually removed, whereupon, at the following sessions, the overseers of A, according to the practice of the court, entered an appeal against the order as by the overseers of B, but without their knowledge, and the order was confirmed with costs. More than six months after the confirmation, the pauper was removed to B, whereupon the overseers of B applied at the next sessions to erase the entry of the previous appeal and order, and to enter their appeal against the removal. The sessions refused, and the court issued a *mandamus* to them to erase the prior entry, and to enter and hear the subsequent one.

And in *Reg. v. Justices of Montgomeryshire*, (2 N. S. C. 78), the result of the cases is stated to be that the sessions are the proper judges of their own rules, and that the Court of Queen's Bench will not interfere unless the rules of practice of particular sessions are so unreasonable as to be illegal. And in *Reg. v. Justices of Derbyshire*, (22 L. J. M. C. 31), the court disclaimed the right of a visitatorial power over the discretion of the sessions, which had been asserted in *Reg. v. Justices of Wiltshire*, 10 East, 404; and *Reg. v. Justices of Lancashire*, 7 B. & C. 691.

The sessions cannot make a rule of practice imposing an additional condition of appeal beyond what is required by the statute, (see *Reg. v. Justices of West Riding*, 2 Q. B. 705,) as, for instance, to require the original order or conviction to be filed before the passing of the 11 & 12 Vict. c. 43, s. 14, (*ib.*,) or notice to be given of the appellant having entered and respited an appeal; (*R. v. Norfolk*, 5 B. & Ad. 990; *R. v. Justices of Surrey*, 3 N. S. C. 531;) or of notice of trial of the respited appeal; (*Reg. v. Justices of West Riding*, 5 B. & Ad. 667;) but a practice of sessions to require twenty-eight days' notice in all cases of adjourned appeals is not so unreasonable as to call for the interference of the court. (*Reg. v. Justices of Montgomeryshire*, 2 N. S. C. 78; 3 D. & L. 119; see *post*, pp. 251, 254.)

Where an appeal was given upon the appellant immediately entering into recognizances, and no notice of appeal was expressly required, but by a rule of the sessions to which the appeal lay, notice in writing was required to be given on the Saturday se'nnight preceding the sessions, the conviction took place on Saturday the 24th March, and the sessions were held on Monday the 2nd of April. The recognizances had been entered into on Thursday the 29th of March, and no notice of appeal had been given. It was held that the recognizances were entered into a reasonable time after the conviction, and that was sufficient, and that the quarter sessions were wrong in refusing to hear the appeal because notice had not been given, inasmuch as, assuming the notice to be required, it must be reasonable, and there was not time to give it, and so the sessions were not practicable, and the sessions ought to have entered and respited it. (*Ex parte Blues*, 5 E. & B. 291; 24 L. J. M. C. 138.)

So, where a statute gave an appeal from a conviction by a justice to any quarter sessions to be holden within six months from such conviction, on condition that the appellant should give ten days' notice of his intention to appeal, and enter into a recognizance within four days after such notice, an appeal was lodged at the first sessions after a conviction; the sessions discharged it without entering into the merits, for want of proof that the recognizance was entered into within four days of the notice given. At the following sessions, and within the six months of the conviction, a second appeal was lodged, which the court refused to hear. Upon a motion for a *mandamus* to compel the sessions to receive such second appeal, it was held, that the first judgment was conclusive, and that no second appeal could be brought against the same conviction, (on a local Act, 17 Geo. III. c. 106,) for it was held that, after the appeal was lodged and adjudged by the justices at sessions to be informal, they were *functi officio*, and could not take cognisance of the second appeal. And Mr. J. Buller said, "The Act certainly only gives a right of appealing *once*, and the parties having had one appeal are bound by that. If the question had rested solely on the notice of appeal for the first sessions which happened, and nothing further had been done, I should not have thought the parties bound by it, for the Act gives the power of appealing within a certain time with these two requisites, *viz.*, that the appellant must give ten days' notice, and within four days after enter into a recognizance." When the party, therefore, found out his mistake, he might have stopped there, but he persisted in going on with his appeal, and brought it before the court, and took their judgment upon it; the appellant jurisdiction was therefore fully exercised, and though it was originally in the option of the parties whether they would appeal to the first or second sessions which took place within the six months, yet, having made their election to appeal to the first, they must abide by the judgment there given. (*R. v. Justices of Yorkshire*, 3 T. R. 776.)

If an appeal against an order has been dismissed, and the order confirmed not on the merits, and due notice having been given, the right of the appellant is not affected by that entry if he can bring his appeal on in due time at a subsequent sessions; (*R. v. Macclesfield*, 13

4. *Preliminary steps before Trial.*

After the appeal has been once heard and decided the sessions are *functi officio*.

4. Preliminary steps before Trial.

Q. B. 881;) the matter resting solely on the notice, and nothing more, and the court not having exercised its judgments in any way on the appeal; (see *R. v. Justices of Yorkshire*, 3 *T. R.* 776;) but if the appeal has been entered upon and been disposed of according to law, though upon the ground of the want of a formal document required by the practice of the sessions, the right of appeal has been exercised, and is gone; (*Reg. v. Justices of Peterborough*, 6 *D. & L.* 512; 18 *L. J. M. C.* 79; *R. v. Oundle*, 3 *Q. B.* 353;) and so also where it has been dismissed on the ground of want of proof of recognizances having been entered into within due time. (*R. v. Justices of Yorkshire*, 3 *T. R.* 776.)

But if the statute giving the appeal only enact that the appellant shall not be heard in support of his appeal, unless he give notice of it, or the like, the sessions have jurisdiction over the appeal, though no notice have been given; (*R. v. Justices of Cheshire*, 8 *Ad. & Ell.* 398;) and may therefore receive and adjourn it. (*R. v. Inhabitants of Kimbolton*, 6 *Ad. & Ell.* 603; *post*, p. 253.) And the power of adjournment is only where the sessions cannot conveniently hear the appeal after it has been duly entered. (*R. v. Justices of Oxfordshire*, 1 *M. & S.* 448; see *R. v. Justices of Lincolnshire*, 3 *B. & C.* 548.)

By the "Highway Act" (5 & 6 Will. IV. c. 50, s. 88) power is given to any person aggrieved by an order for stopping up an highway to make complaint against the order by appeal to the quarter sessions, upon giving to the surveyor ten days' notice in writing of such appeal, together with a statement of grounds of appeal; and this was held to require the ten days' notice before the appeal could be lodged, and in default of it an order of sessions entering and respiting the appeal was quashed, and it was further held, that the proviso to the section saying "that the appellant could not be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid," had not the effect of restraining the language of the above enactment, so as to give the right of lodging the appeal without the notice being given. (*Reg. v. Justices of Lancashire*, 8 *E. & B.* 563; 27 *L. J. M. C.* 161.)

V. Hearing and Trial. Judgment. Adjournment, &c.

(1.) HEARING AND TRIAL.

Calling on.

Appeals are usually called on for hearing in the order in which they stand in the paper of the clerk of the peace, which should be that in which they are entered. This, however, appears to be mere matter of arrangement in the discretion of the court, who may take the appeals in any order which the general convenience of the public, or particular circumstances, may seem to them to dictate.

In general a preference is given to *foreign* appeals.

Personal appearance of appellant and respondent.

There seems to be no general rule requiring the personal attendance of the appellant, and the necessity for this depends in a great measure upon the practice of each sessions respectively. In an appeal against a conviction on the "Stage Coach Act," (50 Geo. III. c. 48,) it was resolved by the quarter sessions for the county of Essex, that the appellant must be present at the hearing of his appeal. (*R. v. Cracklin*, *Mich.* 1822.) The like practice seems to prevail at the Middlesex sessions. (*Paley*, *Conv.* 5th ed. by Macnamara, 369, n. (p).)

After notice of countermand of appeal against an order of removal, though it arrive too late to be of effect, according to the practice of the sessions, the sessions have no jurisdiction to hear the appeal at the instance of the respondents, in the absence of the appellants; and an order which stated that, no one appearing to prosecute the appeal, an order of removal was confirmed was quashed; (*R. v. Stoke Bliss*, 13 *L. J. M. C.* 151; 6 *Q. B.* 158; see *R. v. Justices of West Riding*, 5 *Q. B.* 1;)

but where an order of justices, under 11 Geo. II., c. 19, s. 4, adjudging the payment of double the value of goods fraudulently removed, was affirmed on appeal by the sessions, without hearing, owing to the absence of the appellant's attorney, and the sessions refused to re-open the appeal, except on the terms of payment of full costs, the Court of Queen's Bench refused to interfere by *mandamus*. (*R. v. Justices of Lancashire*, 2 Jurist, 468, B. C.)

The first step, after the appeal is called on, is that the appellant should prove that he has performed the conditions (if any) precedent to his right of appeal; as that he has given notice of the appeal, and entered into a recognizance, or the like. In default of the above proof, the sessions have no jurisdiction to hear the appeal. (*Ante*, 237.)

But it seems, however, that the respondent may waive proof of the above. (*R. v. Justices of Herts*, 4 B. & A. 561; see *Talfourd's Dick. Sessions*, 650.) Thus, where notice of appeal was given against a poor-rate, and the respondents attended at the sessions, and prayed a respite, alleging that they had not had time to prepare their defence to the matters stated as grounds of appeal, the appellant opposed the respite, but it was granted, no notice of appeal having been proved, or expressly admitted. An order of respite was made out, embodying the grounds of appeal stated in the notice; it was held, that at the following sessions the appellant was entitled to be heard without proving any notice of appeal. (*R. v. The Justices of Hertfordshire*, 1 Nev. & M. 331; 4 B. & Adol. 561.)

The court of sessions are to say whether reasonable notice of appeal has been given, and they are to judge what notice is reasonable where the statute does not require any particular time for such notice. (See *R. v. Justices of Surrey*, 5 B. & Ald. 539; see *ante*, pp. 231, 233, and as to the rules and practice of sessions, p. 238.)

If the appeal be against an order of justices, the order should be produced by the appellants, or its non-production accounted for in the usual way, and some other evidence of it be given. It is a reasonable practice to make this a necessary preliminary to the appeal; and if the sessions dismiss an appeal for non-compliance with this practice, the court will not interfere by a writ of *mandamus*. (*R. v. Justices of Sussex*, 9 Dowl. 125; *Reg. v. Justices of Peterborough*, 5 D. & L. 512.)

The appeal having thus been regularly brought before the sessions, they should proceed to hear the same.

If the sessions improperly refuse to hear the appeal upon a preliminary point which is a matter of law, the Court of Queen's Bench will compel them to do so by a writ of *mandamus*; (*Reg. v. Justices of Kesteven*, 3 Q. B. 810; 13 L. J. M. C. 78; *R. v. Inhabitants of Frieston*, 5 B. & Ad. 597; *R. v. Justices of Sussex*, 9 Dowl. 125; *R. v. Justices of Cheshire*, 8 Dowl. 616; *R. v. Justices of Gloucestershire*, 1 B. & Adol. 1;) where one witness had been examined on the appeal before the objection as to the jurisdiction was taken; (*R. v. Justices of Cumberland*, 4 Ad. & Ell. 695;) where part of the appeal had been heard; (*R. v. Justices of Carnarvon*, 4 B. & Ald. 86.) And it seems that the Court of Queen's Bench will, upon granting the *mandamus*, take into their consideration the evidence given before the sessions. (*R. v. Justices of Cheshire*, *supra*.)

The *mandamus* should be applied for within the term next after the refusal to hear the appeal. (*Reg. v. Recorder of Richmond*, E. B. & E. 253; 27 L. J. M. C. 197; *R. v. Justices of the West Riding*, 2 Q. B. 706; 11 L. J. M. C. 80.)

If the sessions dismiss the appeal subject to a case, which the applicants for the case do not take up to the Court of Queen's Bench, that court will not, at the applicant's instance, grant a *mandamus* to enter continuances and hear the appeal. (*R. v. Justices of the West Riding*, 1 Ad. & Ell. 607; *R. v. Justices of Suffolk*, 6 Ad. & Ell. 109; *R. v. Justices of Northampton*, 6 Ad. & Ell. 111.)

5. *Hearing and Trial of.*

Proof to give sessions jurisdiction.

Respondent may waive proof of conditions precedent.

Sessions improperly dismissing appeal

When appeal dismissed subject to a case.

5. *Hearing and Trial of.*

When a case stated is sent back to the sessions to be re-stated, the party who in the first instance succeeded at sessions is not bound to stir the case for the purpose of having the order of sessions reviewed; and therefore, where, on appeal against an order, the sessions quashed the order subject to a case, and the case was stated and argued, when the court sent back the case to be re-stated, and the respondents, without applying to the appellants for a meeting to re-state the case, and without giving them notice of an intention on their part to bring the matter before the next quarter sessions, moved the sessions in the absence of the appellants, that the original order might be confirmed, and the sessions confirmed it accordingly. The last order of sessions was quashed because no notice of the application to sessions was given to the appellants, though they had been served with the rule for sending the case back to be re-stated. (*Reg. v. Barnes*, 3 Q. B. 437; see also *post*, p. 247.)

Where sessions rightly refuse to hear appeal, but for insufficient reasons.

Proceedings on hearing.

If the sessions rightly refuse to hear the appeal, the Court of Queen's Bench will not compel them to hear it, upon the ground that they so refused for insufficient reasons. (*R. v. Justices of the West Riding*, 1 G. & D. 630, see *ante*, 241.)

It may be as well here to state that in some cases the appellant cannot, by the statute giving the appeal, go into any ground of appeal not stated in his notice: but when this is not the case the appellant may be allowed to travel out of it, provided it has not misled the respondent, in which case the sessions should sometimes adjourn the appeal. (*R. v. Justices of Westmoreland*, 10 B. & Cres. 226; *ante*, 232.)

As to conviction or orders.

Formal objections.

Where the appeal is against a conviction, the clerk of the peace first reads the conviction which has been returned by the convicting justices. (a) If any objections arise on the face of the conviction, the

Sessions only to take notice of record of conviction returned by justices.

(a) The sessions can only take notice of the record of the conviction returned by the magistrate. Thus a conviction on 48 Geo. III. c. 74, s. 13, having been appealed against, the magistrate returned to the session a record of conviction, signed and sealed the 5th June, 1811, setting forth that the appellant on such a day was, on the complaint of *Isaac Mann*, convicted, &c. It appeared on the trial of the appeal, that at the time of the conviction an instrument bearing the same date was regularly signed and sealed by the magistrates, stating that the defendant on the same day was, on the complaint of *W. Bourne* and *Isaac Otley*, convicted, &c. A copy of this latter instrument had been delivered by the justice's clerk to the defendant, written on the back of the information, which information thereby appeared to be that of *Isaac Mann*, and not of *W. Bourne* and *J. Otley*, who were in fact the witnesses, and not the informers. This copy was produced by the appellant at the sessions, but the court refused to let it be filed. They, however, took notice of it as a memorandum or *minute* of the conviction, and ordered that which was returned on parchment by the magistrate, and filed, to be quashed,

because of its variance from the above minute. This order of the sessions having been removed by *certiorari*, a rule was obtained for quashing it, which in effect was to set up again the conviction returned by the magistrates. Upon argument, the Court of Queen's Bench considered the conviction returned to the sessions by the magistrate as the only one of which the sessions could take notice, and that, consequently, they had done wrong in quashing it on account of the manifest mistake in the copy or memorandum produced by the appellant. (*R. v. Allen*, 15 East. 333, 346.) It was said by the court upon that occasion, that if the justice had done wrong in returning an improper conviction to the sessions, he would be punishable; but it clearly appeared that the copy delivered to the appellant was drawn up in the form he received it by mere mistake, for it was drawn up on the back of the information of the very person who was the true informer. (*R. v. Allen*, 15 East, 333, 346.) And the court agreed, in this case, that as the defendant had chosen to stand upon the objection which he had taken, he had avoided entering into the merits of the case upon the appeal; and they

appellant usually begins, and he is bound to state all his objections hereto at once, in order that they may be met on the other side, for it would be endless if each objection were to be discussed and decided *seriatim*.

By 12 & 13 Vict. c. 45, s. 7, "Whereas in many cases, where justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matters in question: for remedy thereof be it enacted, that if upon the trial of any appeal to any court of general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorised the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed."

Sect. 9. "And be it enacted, that the decisions of the court of general or quarter sessions of the peace upon the hearing of any appeal, as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of certiorari or *mandamus*, or otherwise."

By 11 & 12 Vict. c. 44, s. 6, "It is enacted, that in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order, which either before or after the granting of such warrant shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant, for any thing which may have been done under the same by reason of any defect in any such conviction or order."

See also 5 Geo. II. c. 19, s. 1.

Judgments would include convictions. (*Paley on Conv.*, 5th ed. 360.) Similar provisions are contained with reference to orders of removal in 11 & 12 Vict. c. 31, s. 6, and as to lunacy orders, 16 & 17 Vict. c. 97, s. 116.

Should the objections to the form of the conviction be overruled, or none be taken *in limine*, the respondent, or his counsel, opens his case upon the merits, and calls his witnesses; and he is not confined to such witnesses as were examined below. (See *infra*.) Such witnesses may be cross-examined.

The onus being thrown upon the prosecutor to sustain the prosecution if no one appears to sustain it, it becomes the duty of the court to give effect to the appeal, and to quash the conviction upon the presumption that the prosecutor is unable to support the conviction, inasmuch as he does not appear to do so. (*Reg. v. Purdey*, 5 B. & S. 909; 34 L. J. M. C. 4.) So also in the case of orders the respondents must begin and support the order, or the appeal will prevail without more. (*R. v. Knill*, 12 East, 50; *R. v. Newbury*, 4 Term R. 475.)

If the court thinks the case thus opened and proved requires an

5. Hearing and Trial of.

Who to begin.

Amendment of orders or judgments of justices on appeal.

Decision of sessions, when final.

After a conviction or order confirmed on appeal no action shall be brought against the justice for any thing done under a warrant upon it.

On the merits.

Appellant's answer.

therefore refused to send the case down again to be heard upon the merits. (See *Paley on Conv.* 5 ed. Macnamara, 289, 290.)

If, indeed, a magistrate wilfully

misstate material evidence, he will be subject to a criminal information or indictment. (*R. v. Barker*, 1 East, 186. See *post*, "Conviction," and "Justices.")

5. *Hearing and Trial of.*

Respondent's reply.

Fresh evidence on.

Case sent back to be re-stated.

answer, the appellant then opens his case and calls his witnesses, with the like liberty of calling fresh evidence, in addition to what he may have relied upon on the hearing of the information.

As soon as the appellant's case is closed, the respondent has a general reply upon the whole case, if the appellant calls witnesses; but if the appellant calls no witnesses, the case is closed by the appellant's, or his counsel's, address.

Both parties are at liberty to examine all competent witnesses on their behalf, without regard to whether they have been examined before or not, unless it is provided by statute, (as by the 48 Geo. III. c. 74, s. 15,) that upon the appeal the same witnesses, and no other, shall be re-examined. (*Breedon v. Gill*, 1 *Ld. Raym.* 219, which was a conviction on the Malt Act.) And this rule extends to appeals to the commissioners of appeals in matters of excise. (*R. v. Commissioners of Appeal in Matters of Excise*, 3 *M. & S.* 133; see *R. v. Jeffery*, 2 *D. & R.* 860; 1 *B. & C.* 604; *Paley, Conv. by Macnamara*, 369; *post*, "Excise," Vol. II.) See as to appeals against orders of removal, *post*, "Poor," Vol. IV.

On a case sent back to the sessions to be re-stated, they may receive further evidence. (*R. v. Bloxam*, 3 *New. & M.* 385; 1 *Ad. & El.* 386; see *R. v. Justices of Suffolk*, 1 *B. & Ald.* 645. See *post*, 247.)

(2.) JUDGMENT ON, AND HOW FAR CONCLUSIVE.

Practice as to.

When the case and proceedings are closed, the chairman collects the opinion of the justices, and pronounces that of the majority for confirming or quashing the order, conviction, or rate, which is the subject of the appeal.

Who may vote. Justices who made the order.

In giving this judgment, the justices who made the order have no right to vote. (*Case of Fexham tithing*, 2 *Salk.* 407; *Reg. v. Justices of Hertfordshire*, 6 *Q. B.* 753, *infra*.)

Magistrates interested in appeal.

Also magistrates interested in the appeal have no right to vote. If they do, the Court of Queen's Bench will quash the order of sessions, though there be a statutory clause taking away the writ of *certiorari*. (*Reg. v. Justices of Hertfordshire*, *ubi sup.*; *R. v. The Cheltenham Commissioners*, 1 *Q. B.* 467; *Charte v. Kennington*, 2 *Str.* 1173; *R. v. Yarpole*, 4 *T. R.* 71; *R. v. Gudridge*, 5 *B. & C.* 459.)

A paving Act empowered commissioners to lay rates, giving to parties aggrieved an appeal to the quarter sessions, whose order was to be final; and no order, rate, &c., was to be removed by *certiorari*. On appeal against a rate, the respondents objected to the admission of certain evidence; the sessions, by a majority of eleven magistrates to eight, held the evidence admissible: three of the eleven magistrates were partners in a company to which belonged certain premises assessed to the rate in the name of the occupier. The sessions quashed the rate; held that, a question in the cause having been decided by a court improperly constituted, on account of the interest of the three magistrates, the clause prohibiting *certiorari* did not operate; and the Court of Queen's Bench had the order of sessions brought up by *certiorari*, and quashed it on affidavit of the above facts, although the affidavits did not satisfy the court that the magistrates had acted partially. (*R. v. Cheltenham Commissioners*, *ubi sup.* See *post*, "Certiorari," and "Sessions.")

Lord Denman, in giving his judgment in this case, said, "A difficulty does certainly arise from the case of *R. v. Justices of Monmouthshire*, (8 *B. & C.* 137,) reported in Messrs. Manning and Ryland's Reports as *R. v. The Inhabitants of Uske*; (2 *Man. & R.* 172;) but, in comparing these reports, and looking at the account of the case in *Burn's Justice*, (vol. iv. p. 919, 28th ed.; see *post*, Vol. IV.,) which appears to be com-

piled from the two, it is clear that Lord Tenterden was not sanctioning the voting by a magistrate in a case where he had an interest. It seems that the party applying for the *certiorari* wanted to quash the order of removal. The sessions at the trial of the appeal had made an order of adjournment, two magistrates having previously voted for the respondent parish, and two for the appellants; one of the former being a rated inhabitant of the respondent parish. The party applying for the *certiorari* contended that this was, in law, a decision for the appellant parish, because the vote of the interested magistrate could not be considered as any vote; and that consequently the sessions had no power to adjourn the appeal after such a decision. They, therefore, proposed to quash both the order of removal and the order of adjournment. Lord Tenterden then, after protesting against a magistrate's voting where he is interested, refused to quash the order of adjournment, because, *as to that*, the Court of Queen's Bench could not sit in error on a decision of the court below in a matter within its jurisdiction; and, as to the order of removal, there had clearly been no valid decision of the sessions against it, and this court could not make one. Therefore, neither branch of the rule which it was proposed to make on the orders being brought up could have been granted. But this is a very different thing from refusing to interfere for the purpose of preventing a decision taking effect in which an interested magistrate has participated."

But it seems that interested magistrates may vote with the consent of the parties to the appeal. (*Id.*)

A rate-payer in the appellant parish upon an appeal against an order of removal, is interested in the result of the appeal. (*R. v. Justices of Suffolk*, 18 Q. B. 416; 21 L. J. M. C. 169.) So is a deputy recorder who is a rated inhabitant in a parish in a union where the appeal was between two other parishes of the same union respecting the valuation of rateable property, when the parishes contributed to a common fund. (*Reg. v. Recorder of Cambridge*, 8 E. & B. 637; 27 L. J. M. C. 160.) And the 16 Geo. II. c. 18, which gives power to justices of a county, city, borough, &c., to act in things relating to their office, so far as the same relates to the poor laws, &c., notwithstanding they are rated to or chargeable with the taxes and rates within such parish, &c., affected by such acts, removes the objection as to justices, but the deputy recorder at sessions is not acting as a justice of the borough. (*Ib.*)

So a magistrate who made the original order, and is a respondent in the appeal, and one who is a creditor of a turnpike trust, having money owing to him, which was secured solely upon the tolls of the trust, are interested in the event of an appeal against an order that part of the assessment levied under 5 & 6 Will. IV. c. 50, should be paid by the surveyor of highways of a parish to the commissioners of the turnpike trust to be laid out in the repair of such part of the turnpike road as lay in the parish. (*Reg. v. Justices of Hertfordshire*, 6 Q. B. 753.)

It is the duty of an interested justice to voluntarily withdraw from the court when the appeal is called on. (*Reg. v. Justices of Suffolk*, 18 Q. B. 416; 21 L. J. M. C. 169.)

The decision of the court, of which an interested justice forms a member, is vitiated, whether the majority turns upon his vote or not, and whether his interference had any influence or not. (*Reg. v. Justices of Suffolk*, *id.*; *Reg. v. Justices of Hertfordshire*, *id.* See *post*, tit. "Sessions.")

It may be a question whether the "Justice of the Peace Act, 1867," (30 & 31 Vict. c. 115,) which removes the disqualification on account of being a rate-payer, applies to appeals under the Acts mentioned therein. (See *post*, tit. "Sessions.")

The Court of Queen's Bench, in the above case of *R. v. The Cheltenham Commissioners*, on quashing the order of sessions, granted a rule nisi for a *mandamus* commanding the sessions to hear the appeal.

The chairman has the same right to vote as any other justice present; Chairman.

5. *Hearing and Trial of.*

Equal division of court.

but he has no casting or double vote to give, in case the numbers, including his own vote, shall be equal. In case of equal division, it seems that the proper course is for the court to order the appeal to stand adjourned till the next sessions; and it has been said, that it is the duty of the clerk of the peace so to enter it. (See *R. v. The Justices of Leicestershire*, 1 M. & S. 442.) But this doctrine has been disputed in the case of the *R. v. Justices of Monmouthshire*, (4 B. & C. 844; 7 D. & R. 334,) in which it was contended that, as the respondents, in case of removal, are bound to support the order, they fail to do so, when the court does not decide with them, and consequently the order must, on equal division, be quashed. (And see *R. v. Inhabitants of Fladbury*, 10 Ad. & Ell. 706; 2 Per. & D. 471.) On this point the court gave no opinion; but the court clearly held, that the bench at sessions, having, on an equal division, given judgment that the order should be quashed, that judgment so given, even if erroneous, could not be reviewed by the Court of Queen's Bench, as no case had been reserved for their opinion. (*R. v. Justices of Leicestershire*, 1 M. & S. 444; *Talf. Dick. Sess.* 660, 661.) See also the judgment of Lord Denman, in *R. v. Cheltenham Commissioners*, *supra*, p. 244.) But in *Reg. v. Belton*, (11 Q. B. 380; 17 L. J. M. C. 70,) Lord Denman, in answer to the argument that if the court were equally divided in opinion the appeal would not be decided, said that that amounted legally to a judgment, that nothing should be done in that case, and the result would be that the judgment of the sessions would be the judgment of the justices out of sessions.

Where a case from the quarter sessions stated, that the justices being equally divided in opinion, the chairman gave a casting vote in favour of the order, which was confirmed accordingly; that on the following day the appellant's counsel protested against the legality of the decision; that the question was then argued on both sides, and that the justices then present "determined to adhere to" the former decision; the Court of Queen's Bench held, that, although the proceeding on the first day was irregular, they could not assume that the judgment on the second day was not a judgment upon the merits. (*R. v. Inhabitants of Fladbury*, *supra*.)

Sessions not bound to give reasons or make special entries.

The Court of Queen's Bench cannot compel the sessions by *mandamus* to give their reasons for their judgment, or make any special entries on their record. (*R. v. Justices of Devon*, 1 Chit. Rep. 34, 164; *R. v. Justices of Worcestershire*, *id.* 649; *Ex parte Morgan*, 2 Chit. 250; *R. v. Commissioners of Flockwold Inclosure*, *id.* 251; *R. v. Justices of Wilts*, *id.* 257; *post*, "Sessions," Vol. V.)

Nor will the court grant a *mandamus* to erase an entry made by the sessions, when they have not stated a case for the court; (*Ex parte Overseers of Pontefract*, 3 Q. B. 391; *Ex parte Overseers of Acworth*, 3 Q. B. 397;) in which cases the entry sought to be erased was "quashed, not on the merits," unless the sessions have no authority whatever to make the entry sought to be erased; (*Reg. v. Justices of West Riding*, *id.* 394, 399;) or the entry has been obtained in an irregular and improper manner, and is converted to a fraudulent purpose; (*R. v. Justices of West Riding*, 5 Q. B. 1, *ante*, p. 238;) and in the case of malversation the Court of Queen's Bench will set aside the judgment of the sessions, and this though there be a statute taking away the writ of *certiorari*. (*R. v. Cheltenham*, 11 A. & E. 467; 1 G. & D. 167; *post*, "*Certiorari*," and "*Sessions*," Vol. V.)

See *post*, "*Poor*," Vol. IV., as to the sessions making a special entry when an order of removal is quashed for want of form, in order to prevent their judgment being conclusive upon a subsequent appeal.

Special case.

If the right to a *certiorari* is not expressly taken away, the sessions may remit a case, on proved or admitted facts, to the Court of Queen's Bench, and this is usually done on doubtful and difficult questions. (See *post*, tit. "*Certiorari*," and "*Sessions*," Vol. V.)

The court refused to hear a case sent up by the quarter sessions, which concluded thus, "If the Court of Queen's Bench shall be of opinion, &c., then the order to be confirmed; but if the court shall be of a contrary opinion, then the appeal to stand respited until the next sessions after the judgment of the court," because the sessions had at the same time asked the court to decide the case, and had reserved the power of afterwards deciding it themselves. (*Reg. v. Inhabitants of Wistow*, 1 G. & D. 681.)

If the sessions quash the conviction for matter of form, subject to the opinion of the Court of Queen's Bench upon the validity of the objection, and it appears to the court when the conviction is returned that there is no defect of form, the court will send the case back to be heard on its merits. (*R. v. Ridgway*, 1 D. & R. 132; 5 B. & A. 527. See the case in full, *post*, 252; and see *R. v. Inhabitants of Arlecdon*, 11 Ad. & Ell. 87; *ante*, 234.)

Where an order of justices has been quashed on appeal, subject to a case, and the Court of Queen's Bench directs the case to be re-stated, the sessions have no jurisdiction to hear evidence thereon, or to confirm or quash the order without a notice by one of the parties to the other of an intention to proceed at such sessions, which notice may in such a case be given by the respondents. (*R. v. Barnes*, 2 G. & D. 233; 3 Q. B. 437, *ante*, pp. 242, 244.)

Serving a copy of the rule of the Court of Queen's Bench, directing the case to be re-stated, will not dispense with such service of a notice. (*Id.*; see *ante*, 242.)

Where the quarter sessions have dismissed an appeal upon a point of practice subject to a case, which the applicants for the case have not brought up, the Court of Queen's Bench will not, at their instance, grant a *mandamus* to enter continuances and hear the appeal. (*Ante*, 242.)

Where the sessions refused to hear or respite an appeal against an order of removal, upon the ground that notice of the grounds of appeal had not been given as required by the statute, and confirmed the order subject to the opinion of the Court of Queen's Bench on a special case, &c., and subsequently, at the same sessions, upon a motion of course made by the appellants, an order was made permitting the same appeal to be entered a second time, to be tried at the next general quarter sessions of the peace; at which sessions the justices dismissed the appeal when they found out that it was the same one that they had previously dismissed, subject to a case, which had not been taken up; the Court of Queen's Bench held, upon a case reserved, that they had rightly done so. (*R. v. Inhabitants of Oundle*, 3 Q. B. 353, n.)

The sessions cannot delegate the decision of an appeal to another. However, by the consent of the parties or their attorneys, the sessions may hand over the consideration of the matter in dispute to third persons, or to a committee of their own body, in order to report to them; and may adopt the report, and make an order accordingly, without further exercising their own judgment. (*Talf. Dick. Sess.* 656, citing *R. v. Justices of Northampton*, *Cald. Sett. Cas.* 30; *R. v. Natland*, *Burr. Sett. Cas.* 793; (cited 5 *Tyr. R.* 1056; 2 *C. M. & R.* 377;) *R. v. Harding*, 2 *Salk.* 477. See *post*, "Sessions.")

Now, by 12 & 13 Vict. c. 45, s. 11, "And be it enacted, that any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case, for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be

5. *Hearing and Trial of.*

Case sent back to be re-stated. Notice of re-hearing.

No delegation of authority of sessions allowed.

Power to state a special case without going to the sessions previously.

5. *Hearing and Trial of.*

By consent, and by order of a judge.

entered on motion by either party at the sessions next, or next but one, after such decision shall have been given ; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects, as if the same had been given by the court of general or quarter sessions, upon an appeal duly entered and continued."

A case stated by order of a judge under 12 & 13 Vict. c. 45, s. 11, is in substance on the footing of an ordinary case from sessions, though not so in form, and, therefore, on the argument, the party supporting the order is not entitled to a reply, as he would be on a special case. (*Overseers of Wigton v. Overseers of Snaith*, 16 Q. B. 502.)

References to arbitration.

By the 12 & 13 Vict. c. 45, s. 12, "Whereas, by a statute passed in the tenth year of King William the Third, intituled 'An Act for determining Differences by Arbitration,' provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes, for which there is no other remedy but by personal action or by suit in equity ; and whereas it is expedient in like manner to facilitate and render more effectual references to arbitration of controversies and disputes, for which the remedy is by appeal to a court of general or quarter sessions of the peace ; Be it enacted, that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate, or other matter (except a summary conviction, or an order in bastardy, or any proceedings under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office), for which the remedy is by such appeal, it shall be lawful for the parties by themselves or their attornies, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission, or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons ; and, thereupon, such and the like proceedings in all respects shall and may be taken with regard to submissions under this Act, and to enforcing awards or umpirages thereupon, and to setting aside the same as are authorised by the said Act of King William the Third with regard to the cases therein provided for ; and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions."

By parties, and by order of a judge.

References by order of court of sessions.

Sect. 13. "And be it enacted, that it shall be lawful for any court of general or quarter sessions of the peace before which any appeal (except against a summary conviction, or an order in bastardy, or any proceedings under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office), shall be brought to order, with consent of the parties or their attornies, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such manner, and on such terms as the said court shall think reasonable and proper ; and such order may be made a rule of the Court of Queen's Bench, on the application of either party ; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may on motion by either party at the sessions next, or next but one, after such award or umpirage shall have been finally made and published, or after the decision of the court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court : Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making of publication of such award or umpirage, either refer the same back again to

By consent.

the same arbitrator, arbitrators or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the court of general or quarter sessions to enter continuances and hear the appeal."

The order of reference under the above section ought to provide for the costs of the reference, otherwise the sessions at which the judgment is entered has no power to order either party to pay the costs of the reference. What the subsequent court of quarter sessions has to do is a mere ministerial duty, viz., to enter the award as the judgment of the court. (*Reg. v. Justices of West Riding*, 6 B. & S. 531; 34 L. J. M. C. 142; as to costs, see *post*, p. 257.)

By the 12 & 13 Vict. c. 45, s. 14, "And be it enacted, that if upon any reference to arbitration under this Act, it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of general or quarter sessions of the peace to enter continuances and hear the appeal."

Sect. 15. "And be it enacted, that the several provisions relating to arbitrations contained in an Act of the fourth year of King William the Fourth, intituled 'An Act for the further Amendment of the Law, and the better Advancement of Justice,' shall be deemed and taken to be applicable to arbitrations under this Act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the court of general or quarter sessions of the peace would have had on the trial of the appeal."

Sect. 16. "And be it enacted, that no recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal, shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case, without previously going to the court of general quarter sessions, or by any submission to arbitration under the provisions of this Act."

The judgment of sessions upon the appeal, when they have jurisdiction, though erroneous, is conclusive, and the Court of Queen's Bench has no jurisdiction to review their judgment, *except on a case sent up for its consideration*; and therefore where the sessions, having heard the witnesses on one side, had refused to hear those on the other side, on the ground that their testimony had been prefaced by observations on the part of the advocate, contrary to their usual practice, the court refused to grant a *mandamus* to re-hear the appeal. (*R. v. Justices of Carnarvon*, 4 B. & A. 86; and see *R. v. Inhabitants of Frieston*, 5 B. & Ad. 597; *R. v. Allen*, 15 East, 333; *R. v. Justices of —*, 1 Ch. Rep. 164; *R. v. Farrington*, 4 D. & R. 735; 2 D. & R. M. C. 365; *R. v. Justices of Monmouth*, 7 D. & R. 334; 3 D. & R. M. C. 410; 4 B. & C. 844; 8 B. & C. 137; *R. v. Justices of Kent*, 9 B. & C. 283; *R. v. All Saints, Stamford*, 1 Jurist, 52; *Ex parte Inhabitants of Broseley*, 7 A. & E. 423; *R. v. Justices of Cheshire*, 8 A. & E. 398; 1 Per. & D. 88; *R. v. Justices of West Riding*, 1 Q. B. 624.)

The judgment on appeal may be altered during the continuance of the sessions; (*R. v. Justices of Leicestershire*, 1 M. & S. 442; *R. v. Justices of Yorkshire*, 2 Q. B. 705;) but after the termination of the sessions without an adjournment of the case, and without judgment being given, a subsequent sessions cannot pronounce judgment, or if judgment has been given a subsequent sessions has no power to alter it. (*R. v. Justices of Staffordshire*, 7 E. & B. 935; 26 L. J. M. C. 179.) As to making out the order for costs after taxation, see *post*, as to costs, p. 257.

In *R. v. Justices of Cambridgeshire* (1 D. & R. 325; 1 D. & R. M. C. 86; and see *R. v. Pratt*, 7 Ad. & Ell. 27; 2 Nev. & Per. 102) the defendant, B. D., having been convicted of forcibly passing a turnpike-gate without paying tolls, the sessions on appeal rejected evidence to

5. *Hearing and Trial of.*

Where reference abortive, the Queen's Bench may order sessions to hear the appeal.

The 3 & 4 Will. IV. c. 42, to be applicable to references under this Act.

Arbitrators to have power of amendment.

Recognizances for trial of appeal to stand notwithstanding reference.

When decision of sessions conclusive.

Altering decision.

5. *Hearing and Trial of.*

show that the gate had been unlawfully erected, and the Court of Queen's Bench refused a *mandamus* to compel the sessions to receive such evidence, the admissibility of it being exclusively a question for the justices. The court also refused to issue a *mandamus* to the sessions to hear an original complaint, touching the conduct of the trustees in the erection of the gate, leaving the party to proceed by indictment for the nuisance, or by an action of trespass, if his passage was obstructed.

When the court will interfere by *mandamus* to compel the hearing of an appeal.

But where any preliminary step is necessary in order to give the court of quarter sessions power to hear the appeal, and the court comes to a wrong conclusion of law, not of fact, in respect to that preliminary step, the court will interfere by *mandamus*. (*Reg. v. Goodrich*, 19 L. J. Q. B. 413; *Reg. v. Recorder of Liverpool*, 20 L. J. M. C. 35; *Reg. v. Justices of Bucks*, see ante, p. 233). But where an appeal has been duly entered and called on, and a decision given, whether upon construction of law or upon the facts, which results in the exclusion of further evidence ready to be given, there is no declining of jurisdiction, nor can the court interfere by *mandamus*. (*Reg. v. Recorder of Liverpool*, *ubi supra*; *Reg. v. Pratt*, *ubi supra*.)

As to the hearing.

Where the sessions decided that sufficient search had not been made for an agreement to let in secondary evidence of its contents, the court will not interfere with their decision unless it sees clearly that the sessions were wrong on a matter of law, or on a mixed question of law and fact. (*Reg. v. Justices of Hinckley*, 3 B. & S. 885; 32 L. J. M. C. 158; *Reg. v. Liberty of Saffron Hill*, 1 E. & B. 93; 22 L. J. M. C. 22; *Reg. v. Blanshard*, 13 Q. B. 318.)

The distinction between those cases in which the court will grant a *mandamus* to an inferior court to exercise its jurisdiction after it has declined to exercise it, and those in which it will not interfere, is well shown by the case of *Reg. v. The Deputies of the Freemen of Leicester* (15 Q. B. 671). There, by a private Act, deputies were to be elected by the freemen of Leicester, and if the election of any deputy was disputed, the deputies were to decide at their next meeting on the validity of the election, before which meeting the party questioning the right of the sitting deputy was to give or deliver four days' notice in writing unto such deputy. B. & L. were elected deputies, and their elections were disputed. At the next meeting of the deputies evidence was given that the notice was left in due time with B.'s wife. The deputies decided that personal service was requisite, and refused to enquire further into B.'s election. In L.'s case, direct evidence was given that notice had been personally served upon him, but the deputies, by the casting vote of their chairman, decided that it had not been so served, and in his case also refused to enquire further. A rule *nisi* for a *mandamus* in each case to the deputies had been obtained to compel them to hear and decide on the merits of the objections. It was held that in B.'s case, as the private Act did not require personal service, the deputies had made a mistake in law, and acting on that mistake, they declined to hear the case, and therefore the *mandamus* should go; but in the other case, the deputies had considered whether *de facto* a notice had been given to L., and disbelieved the witness, therefore the *mandamus* should not go. (See also *Reg. v. Recorder of Richmond*, E. B. & E. 253; 27 L. J. M. C. 197; *Reg. v. Brown and others*, 7 E. & B. 757; 26 L. J. M. C. 183). In *Reg. v. Deputies of the Freemen of Leicester*, (*ubi supra*), the *Justices of Cumberland* (4 A. & E. 695) was expressly overruled.

Decisions of sessions when final as to amendment.

By the 12 & 13 Vict. c. 45, s. 9, it is enacted that the decisions of the court of general or quarter sessions of the peace, upon the hearing of any appeal as to the sufficiency of any statement of any ground or grounds of appeal, or as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of

any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari* or *mandamus*, or otherwise.

It may be as well here to mention, that in a case of malversation, the Court of Queen's Bench will set aside the judgment of the sessions; and this though there be a statute taking away the writ of *certiorari*. (*R. v. Cheltenham*, 11 *Ad. & Ell.* 467; 1 *Gale & D.* 167; *ante*, pp. 244, 246, *post*, "*Certiorari*," and "*Sessions*," Vol. V.)

The Court of Queen's Bench will not interfere with the established practice of the sessions, unless it appears to be manifestly wrong or unjust; (*R. v. Justices of Essex*, 2 *Chit.* 385; *R. v. Justices of Sussex*, 6 *M. & Sel.* 57; *R. v. Justices of Monmouthshire*, 3 *D. P. C.* 306; see *R. v. Justices of Bucks*, 6 *D. & R.* 142; 3 *D. & R. M. C.* 23;) and from *R. v. Justices of Yorkshire, W. R.*, (2 *Q. B.* 705; 6 *Jurist*, 531 *Q. B.*) it would seem that a rule of the sessions, requiring that, on entry of an appeal against an order of removal, the original order shall be filed, is invalid. (See *ante*, p. 239.)

On appeal against an order of removal, both parties attended at sessions, full notice of appeal having been given, and no countermand. The appellants then moved to enter the appeal, and to respite it, on the ground of a material witness being absent. The sessions refused to comply with the motion, unless on payment of the costs of the day, which it was their practice to require in such cases; and the appeal was not entered. On a motion for a *mandamus*, the Court of Queen's Bench held, that the sessions had exercised a proper discretion in refusing to respite, and that their not having entered the appeal was immaterial. (*R. v. Justices of Monmouthshire*, 1 *B. & A.* 895.)

Where, by the practice of the sessions, eight days' notice of appeal was required at the first sessions against an order of removal, but fourteen days' notice of an *adjourned* appeal, and an appeal was dismissed for want of sufficient notice for the adjourned sessions, the court refused to interfere with the practice. (*R. v. Justices of Monmouthshire*, 3 *D. P. C.* 306.)

But if the sessions depart from the usual practice in refusing to hear the appeal, the Court of Queen's Bench will interfere; and in *R. v. Justices of Wilts.*, (4 *M. & R.* 401; 8 *B. & C.* 380,) on an appeal under the 17 Geo. II. c. 38, s. 4, a *mandamus* was granted on the ground that the sessions had departed from the usual practice, in refusing to hear the appeal at the second sessions after the making of the rate, where the appeal could not properly have been tried at the former sessions, when it was entered, no notice having been given, though it was not adjourned on that ground. (See *R. v. Justices of Gloucestershire*, 3 *D. P. C.* 298.)

By a statute, parties were enabled in certain cases to appeal to the quarter sessions for a particular district, giving ten days' notice. The Act said nothing as to further notice in the event of such appeal being respited, nor did it appear that there was any rule of practice on the subject at those sessions. An appeal under the statute, of which due notice had been given, was respited, and came on at a subsequent sessions, pursuant to the respite. The appellant was called upon to prove that he had given notice of trial of the *respited appeal*, and on his failing to do so, the appeal was dismissed: Held, that the sessions were wrong in requiring such notice, and that the case was one in which this court might overrule their decision. *Mandamus* was granted to hear the appeal. (*R. v. Justices of W. R. Yorkshire*, 5 *B. & Ad.* 667; *Bower v. Accounts of the Commissioners of Meltham Inclosure*, 5 *B. & Ad.* 667; and see *R. v. Justices of Staffordshire*, 4 *Ad. & Ell.* 842; and *post*, 254.)

Where the sessions quash a conviction for matter of form only, subject to the opinion of the Court of Queen's Bench upon the validity of the objection, and it appears to the court, when the conviction is returned by *certiorari*, that there is no defect of form, they will send

5. *Hearing and Trial of.*

Practice of, when conclusive.

Notice of adjourned appeal by rule of practice.

Notice of respite where no rule of practice.

If conviction improperly quashed for form, the decision is not conclusive.

5. *Hearing and Trial of.*

the case back to be heard on the merits. (See *ante*, 247.) In *R. v. Ridgway*, (5 B. & A. 527; 1 D. & R. 132,) the defendant had been convicted by two justices on the stat. 39 & 40 Geo. III. c. 106, s. 4, of attending a meeting of journeymen bleachers, held for the purpose of maintaining, supporting, continuing, and carrying on a combination for the purpose of obtaining an advance of wages. On appeal the sessions quashed the conviction, subject to the opinion of the Court of Queen's Bench as to its sufficiency in point of form. The conviction having been removed by *certiorari*, and a rule *nisi* obtained for quashing the order of sessions and sending the case back to be heard on the merits; on showing cause, it was contended, that the court had no jurisdiction to quash the order of sessions; for assuming the court below to have come to an erroneous decision, still the defendant having been acquitted in point of form, that acquittal was conclusive in his favour, from analogy to the rule in other criminal cases, and therefore he could not be put in jeopardy a second time for the same offence. The quashing the conviction is to all intents and purposes an acquittal. This is a criminal conviction against the defendant, and the question is, whether the court will entertain a motion which in its consequences may subject him to a second trial for the same offence. In all cases of felony, an acquittal is a bar to further proceedings against the party; and even in cases of misdemeanour, where the defendant has been acquitted in consequence of a mere clerical objection, still it has been held that no new trial can be had. In this case the defendant has been in fact acquitted, whether properly or not is not the question. In *R. v. Allen*, (15 East, 333;) *R. v. Redfearne*, (4 T. R. 273;) and *R. v. Cook*, (3 T. R. 519;) cases had been reserved on facts, and in the two latter the conviction had been affirmed by the sessions. *Sed per Abbott, C. J.*, "I am not aware of any case in which the point now contended for has been decided; I have a perfect recollection of cases having occurred formerly, in which orders of removal have been quashed for form by the quarter sessions, subject to the opinion of this court whether the original order was right. Where the justices have declared that they have quashed for form, then in such cases this court has considered whether the form was incorrect; now here the justices have declared that they have quashed this conviction for form, subject to our opinion upon the matter. Is their any distinction between this case in principle and those cases to which I have alluded?"

It was then said, in the same case, that many cases of the description alluded to had occurred, but there is a main distinction between orders of removal and convictions on penal statutes. In the former, if the order of removal be irregular and is quashed for irregularity, a fresh order of removal may be made out, for as between two contending parishes an order of removal quashed for want of form would not prevent a fresh removal, and in such cases a special entry is made by the clerk of the peace that the order is quashed for form. In such cases the matter of form has been remitted for the opinion of this court. But there is no analogy between an order of removal of a pauper and a conviction on a penal statute. No penal consequences attach to the former, and therefore there can be no harm in this court reviewing the decision of the sessions; but a case has never yet occurred in which this court has interfered to set the sessions right in a criminal matter where the decision of the justices was in favour of the defendant. *Sed per Abbott, C. J.*, "I am clearly of opinion that we are bound, in the exercise of our judicial authority, to quash this order of sessions, if, upon the face of it, it appear to be founded on an insufficient ground; and I should be of the same opinion whether this sessions had or had not specially asked our opinion upon the question. Supposing no case to have been reserved by the sessions, but that their order and the original conviction on which it was founded had been brought before

us by *certiorari*, it would be our duty to read the order, and if we saw by the terms of it that they had quashed the conviction for informality or insufficiency, then to read the conviction, and if we found it not to be informal, then to send it back for re-hearing upon the merits. No injustice can arise to the defendant by our sending this case back to the sessions, for as his appeal against the original conviction was entered within the time limited by the Act, no subsequent delay can bar him from being heard on that appeal upon the merits."

The court in that case being of opinion that there was no informality in the conviction, quashed the order of sessions, and sent the case back to be heard on the merits.

5. *Hearing and Trial of.*

(3.) ADJOURNMENT OF HEARING.

If an appeal is well lodged, the court of quarter sessions has an incidental power to adjourn it, unless they are restricted by the positive words of a statute. They may therefore adjourn if a witness be ill, or any other circumstance occur which makes it impossible to go on, or to give time for service of statement of grounds of appeal under 4 & 5 Will. IV. c. 76, s. 81. (*R. v. Kimbolton*, 6 A. & E. 603; *R. v. Justices of Wiltshire*, 13 East, 353; *R. v. Justices of Westmoreland*, 10 B. & C. 226; see also per Coleridge, J., *R. v. Mainwaring*, E. B. & E. 474; 27 L. J. M. C. 278.) And the power to adjourn even in the middle of the hearing of a case by the sessions was fully admitted in *Reg. v. Guardians of Cambridge Union*; (1 B. & S. 61; 30 L. J. M. C. 137;) but it was said that such power ought to be exercised with great care and caution, and that it was a bad practice to adjourn a case for the purpose of enabling a party to strengthen their evidence, and that in general an appeal once begun ought not to be adjourned, but that the power of adjournment may be from one sessions to another sessions, and is not confined to the adjournment from one sitting to another sitting of the same sessions. (*Ibid.*) So the judgment only may be postponed; and there cannot be a better reason for an adjournment than that the justices have not made up their minds as to the judgment to be given. (*Keen v. The Queen*, 10 Q. B. 928; 16 L. J. M. C. 180.)

Power of adjournment.

After hearing began.

The sessions may adjourn the hearing of the appeal if they think fit, and they have power so to do, though the statute directs them to determine the matter. (*R. v. Justices of Wiltshire*, 13 East, 352; *R. v. Justices of Westmoreland*, 10 B. & C. 226; *R. v. Inhabitants of Kimbolton* 6 A. & E. 603.)

The occasion for adjourning the hearing is, in the discretion of the sessions, depending on the facts of the case. (*R. v. Justices of Staffordshire*, 2 Doubl. N. S. 353.)

But the general authority to adjourn may be limited by the particular statute giving the appeal. Thus, the "Licensing Act," (9 Geo. IV. c. 61,) by which an appeal is given to the "next" sessions, or in a certain event to the "next subsequent" sessions, "and the court at such sessions" is to hear and determine and make its order with or without costs, takes away the power of adjournment to a subsequent sessions. (*Reg. v. Belton*, 11 Q. B. 379; 17 L. J. M. C. 70; and see *Reg. v. Mainwaring*, E. B. & E. 474; 27 L. J. M. C. 278.)

Power of adjournment limited, when.

So, by the 26 Geo. II. c. 74, the table of fees to be taken by clerks of the peace is to be made at one sessions, and to be approved "by the justices of the peace at the next succeeding quarter sessions," and this statute was held to take away the power of adjournment to a sessions after the "next subsequent sessions." (*Bowman v. Blyth*, 8 E. & B. 7; 26 L. J. M. C. 57.)

On appeals against orders of removal under the poor laws, the 9 Geo. I. c. 7, s. 8, directs, that if it shall appear to the justices that reasonable time of notice was not given, they shall adjourn the appeal to

5. *Hearing and Trial of.*

the next quarter sessions, and then and there finally hear and determine the same. This enactment gives the justices discretionary power to decide, if reasonable notice has been given; if what they consider reasonable notice has not been given, they *must* adjourn the appeal to the next sessions. (*R. v. Justices of Monmouthshire*, 3 Dowl. P. C. 306; *R. v. Justices of Bucks*, 3 East, 342; *R. v. Justices of Shropshire*, 7 East, 549; *R. v. Justices of Suffolk*, 8 Dowl. 618; *R. v. Inhabitants of Kimbolton*, 6 Ad. & Ell. 603; *Reg. v. Justices of London*, 9 Q. B. 41.) The appeal can, it seems, only be adjourned once by virtue of that statute. As to the adjournment of appeals against orders of removal or against a poor rate, see 9 Geo. I. c. 7, s. 8, and 7 Geo. II. c. 38, s. 4, and tit. "Poor," Vol. IV.

Respiting not a matter of course.

In *Reg. v. Skircoat*, (2 E. & E. 185; 28 L. J. M. C. 224,) where notice of appeal was given sixteen days before the first sessions after the making of an order of removal, and, on an *ex parte* motion of counsel, was respited as of course, and tried at the following sessions, it was held that the court had power to try it then; but the court said that if the question had been put whether in their opinion the former sessions in their discretion ought to have adjourned the appeal, they should have answered in the negative, because the appellant had time to bring on the trial, and no ground for the delay was assigned, and that entering and respiting should not be a mere matter of course, but in each case the court should exercise its judgment whether justice requires that the appeal should be adjourned. In *Reg. v. Justices of Sussex*, (4 B. & S. 987; 34 L. J. M. C. 69, overruling the decision of the Court of Queen's Bench,) the Court of Exchequer Chamber held that a sessions held on the 15th of October were right in refusing to respite an appeal which had been entered against an order of removal which had been served on the 30th of August, where the copies of depositions were received by the appellants on the 19th of September, and notice of appeal given by them on the 1st of October, but no grounds of appeal delivered.

To what sessions.

The appeal should not be adjourned later than to the next original sessions. (*R. v. Grince*, 19 Vin. 358; and see *Thurston v. Slaford*, *Lutw.* 911.)

Notice in case of.

If a regular notice of appeal has been given for one sessions, and the appeal be adjourned at the instance of the appellants, after hearing counsel on both sides, it is not necessary to give a strictly regular notice of trial for the following sessions. (*R. v. Justices of Gloucestershire*, 3 Dowl. P. C. 298; but see *R. v. Justices of Essex*, 2 Chit. R. 385; see *post*, 255.)

A rule and practice of the quarter sessions, that in all cases of appeal, not otherwise directed by law, ten days' notice in writing shall be given by appellants to respondents, and that in cases of respited appeals the like notice shall be given, unless there be any agreement between the parties to the contrary, are not applicable to the case of an appeal adjourned to the next sessions at the instance and for the accommodation of respondents; and, therefore, where an appeal having been so adjourned the justices dismissed it at the next sessions, because the appellant had not given notice of his intention to prosecute at the sessions, the court granted a *mandamus* to the justices to hear the same. (*R. v. Justices of Lindsey*, 6 M. & S. 379.)

And where an appeal after hearing at one sessions was adjourned until the following sessions in consequence of an equal division of opinion on the bench, it was held that no fresh notice of trial was necessary for the following sessions, although by the general practice of the sessions a fresh notice of trial is required when an appeal is respited. (*R. v. Justices of Buckinghamshire*, 6 D. & R. 142.)

See *ante*, p. 234, as to serving a fresh statement of the grounds of appeal, after the appeal has been adjourned.

VI. Entering and Respiteing Appeal, and Notice of Trial after same.

See *ante*, p. 237, as to the practice of entering appeals; and as to the effect of not taking preliminary steps, *ante*, p. 237. As to calling on appeals, see *ante*, p. 240.

Before an appeal can be entered or respited the appellant must prove that he has performed the conditions precedent, if any, to his right to appeal; as that he has given notice of the appeal, or the like. (See *ante*, 237.)

If a statute gives a party a right of appeal, but enacts that it shall not be brought, received, or heard, unless notice be given a certain number of days before the *next* sessions, and a recognizance entered into also, if the party omit to give such notice, and enter into a recognizance before those sessions, the sessions have no power to enter and respite the appeal, and a notice or recognizance for any *adjourned* sessions would not be sufficient; and this, whatever the practice of the sessions might be, the statute expressly requiring a notice and recognizance within a specified time, and for a particular sessions. (*R. v. Justices of Lancashire*, 3 B. & C. 548; 5 D. & R. 347, decided on the 49 Geo. III. c. 68, relating to bastards.)

But where the statute giving the appeal only enacts that a party shall not be heard in support of it, unless some act be done, as the grounds of appeal served, and such act be not done, this does not prevent the sessions entering and respiting the appeal. (*R. v. Inhabitants of Kimbolton*, 6 Ad. & Ell. 603; 1 Nev. & Per. 606; *ante*, p. 240.) *R. v. Kimbolton* is distinguished from *Reg. v. Justices of Lancashire*, (8 E. & B. 563; 27 L. J. M. C. 161,) which latter case was an appeal under the "Highway Act," (5 & 6 Will. IV, c. 50, s. 88,) when an order for entering and respiting the appeal was quashed because ten days' previous notice of appeal had not been given to the surveyor. See *ante*, p. 240.

Where an appellant parish gave notice before *Michaelmas* sessions, that they would at those sessions enter and respite and try their appeal with effect at the following sessions, and in the meantime a negotiation had taken place with the respondents as to the settlement of the pauper, but without any determination, it was held to be necessary to give a fresh notice of appeal for the following sessions, to entitle the appellant to be heard. (*R. v. Justices of Essex*, 2 Chit. R. 385.)

After the entry and respite of an appeal, notice of the fact of entry and respite, as well as of notice of trial, cannot be required by any practice of the court of quarter sessions. (*Reg. v. Justices of Surrey*, 3 N. S. C. 531; *Reg. v. Justices of Norfolk*, 5 B. & Ad. 990; *ante*, p. 251.)

Where the sessions refused to hear or respite an appeal against an order of removal, upon the ground that notice of the grounds of appeal had not been given as required by the statute, and confirmed the order, subject to the opinion of the Court of Queen's Bench, on a special case, &c., and subsequently at the same sessions, upon a motion of course made by the appellants, an order was made permitting the same appeal to be entered a second time, to be tried at the next general quarter sessions of the peace; at which sessions the justices dismissed the appeal, when they found out that it was the same one that they had previously dismissed, subject to a case, which had not been taken up; the Court of Queen's Bench held, upon a case reserved, that they had rightly done so. (*R. v. Inhabitants of Oundle*, 3 Q. B. 353.)

We have seen, (*ante*, 227,) that where the order or conviction, &c., is made so short a time before the sessions, that it is impossible, either by reason of the insufficiency of the time for giving the notice of appeal required by the sessions or otherwise, to try the appeal at the next

Calling on.

When appeal to be entered.

Notice of entry and respite unnecessary.

6. *Entering and Respiting.*

sessions, it is not necessary to enter and respite the appeal at such sessions, but the appellant may pass them by, and give notice for, and enter and try his appeal at the following sessions. But where there has been time for the appellant to have given due notice of appeal, it is in the discretion of the court of quarter sessions to respite the appeal or not, although he may, by taking the further time allowed him by the "Poor Law Acts" for giving his notice of appeal, be too late to try at those sessions. (*Reg. v. Justices of Sussex*, 4 B. & S. 966; 34 L. J. M. C. 69; *Reg. v. Justices of West Riding*, E. B. & E. 713; 27 L. J. M. C. 268; *Reg. v. Skircoat*, 2 E. & E. 185; 28 L. J. M. C. 224; see *ante*, p. 228.)

Practice of sessions as to entering appeal, and notice of trial after same.

The practice of the particular sessions at which the appeal is made must, as regards the entering and respiting the appeal, and giving notice of trial after the same, in all cases be conformed to, unless it be manifestly wrong or unjust.

A rule of sessions that all applications intended to be made on orders of maintenance in bastardy be entered with the clerk of the peace on or before twelve o'clock at noon on Tuesday in sessions, and no application be received unless so entered, except on special application to the courts, and such application be called on in the order of entry, has been held to be a rule regulating the mode of making application to the court, which, being a matter of practice, it was quite competent to them to regulate. (*Reg. v. Stamper*, 1 Q. B. 119; 10 L. J. M. C. 73.)

If a statute gives a party a right of appeal on entering into a recognizance, and does not require a notice of appeal, he may enter his appeal and get it respited at the next sessions, having previously entered into such recognizance, *without notice* to the other side; but after the appeal has been respited, *the usual notice of trying it*, as required by the practice of the sessions, must be given, otherwise the sessions will be authorised in dismissing it altogether.

Thus, in the case of *R. v. Justices of Salop*, (2 B. & A. 694), on showing cause against a rule *nisi* for a *mandamus* to the sessions to enter continuances and hear the appeal of one J. R. against the conviction of a magistrate under 52 Geo. III. c. 93, sched. L, rule 12, it appeared that the defendant had been convicted in the penalty of 10*l.* for using greyhounds for the purpose of killing a hare, not having taken out a certificate. Immediately upon his conviction he entered into the recognizance required by the Act to prosecute his appeal against it at the next *January* sessions. At those sessions he accordingly entered his appeal, and it was respited by the court. At the following sessions he again appeared for the purpose of trying the appeal, but it being objected that there had not been eight days' notice given to the convicting justice, as was required by the rule of the sessions, the sessions dismissed the appeal and confirmed the conviction. In support of the rule for the *mandamus*, *R. v. Justices of Leeds*, (4 T. R. 583,) was relied on, and it was contended that the entering into the recognizance before the justice dispensed with the necessity of giving the usual notice to him of trying the appeal. But *per Abbott, C. J.*, "It was, perhaps, sufficient for the party to entitle himself to enter his appeal at the *January* sessions, that he had given the security required by the Act, although no notice of appeal had been given by him, but when once he had entered his appeal, he was bound to conform to the practice of the sessions. It was therefore necessary for him to have given the usual notice of trying his respited appeal at the *Easter* sessions, and not having done so, the sessions were authorised in dismissing the appeal altogether."

When not.

But it is not necessary to give a notice of trying a respited appeal, unless it be required by the practice of the sessions. (*R. v. Lambeth*, 3 D. & R. 340; 2 D. & R. M. C. 26; see also *R. v. Justices of Gloucestershire*, 3 Dowl. P. C. 298; *ante*, p. 254.) In *R. v. Lambeth*, (3 D. & R. 346,) an appeal was entered at the *Easter*, and respited until the *Midsummer*

sessions, and on the 24th of June a copy of the order of respite was served on the respondents without any notice of trial, and the respondents appeared at the following sessions in July; it was held that the sessions were bound to hear the appeal, though no other notice of trying the appeal had been given than the service of the order of respite.

By statute parties were enabled in certain cases to appeal to the quarter sessions for a particular district, giving ten days' notice. The Act said nothing as to further notice in the event of such appeal being respited, nor did it appear that there was any rule of practice on the subject at those sessions. An appeal under the statute, of which due notice had been given, was respited, and came on at a subsequent sessions pursuant to the respite. The appellant was called upon to prove that he had given notice of trial of the respited appeal, and on his failing to do so, the appeal was dismissed: Held, that the sessions were wrong in requiring such notice, and that the case was one in which the Court of Queen's Bench might overrule their decision. A *mandamus* was granted to hear the appeal. (*R. v. Justices of the West Riding of Yorkshire*, 3 Nev. & M. 86; 5 B. & Ad. 667; *Bower v. Accounts of Commissioners of Meltham Inclosure*, 5 B. & Ad. 667; *ante*, p. 251.)

The court of sessions should be uniform in their rules of practice, and should rather lean to the hearing of appeals than to dismissing them on technical grounds. See per *Denman*, C. J., in *R. v. Justices of Norfolk*, 3 Nev. & Man. 86; 5 B. & Ad. 922.

See when the Court of Queen's Bench will interfere with the practice of the sessions, *ante*, pp. 238, 250.

See as to giving notice of trial after the appeal has been adjourned, *ante*, p. 241.

See *post*, "Poor," as to the effect of superseding an order of removal before and after an appeal against it has been entered at the sessions.

7. Costs.

When Queen's Bench will interfere with practice.

Notice after adjournment.

VII. Costs.

The power to give costs is not incident to the authority of the sessions, nor does it exist at common law, and therefore costs can never be given unless by the words of the statute under which the justices are acting.

Costs.

Whenever the sessions grant costs, they must ascertain the costs by their order, (*Ex parte Holloway*, 1 Dowl. P. C. 26,) for they have no power to grant costs generally, like the courts at Westminster, to be afterwards taxed by the proper officer; they may direct the clerk of the peace to ascertain and report to them the items of the expenditure, which may be the grounds of their decision, but they must themselves determine the sum to be paid.

Order for costs to be made by the court.

An order for payment of costs, when made, cannot be enforced by attachment, but the party disobeying it, after it has been personally served on him, will be liable to be indicted for a misdemeanour, and punished for his contempt by imprisonment and fine. (*Reg. v. Mortlock*, 7 Q. B. 459; 14 L. J. M. C. 153; see further, *post*, tit. "Costs;" "Order," Vol. III.)

Where costs are ordered by the sessions as ancillary to their judgment confirming an order of removal on appeal in a case where they had no jurisdiction to hear the appeal, the part of the order relating to costs cannot be separated so as to stand valid upon the quashing of the order. (*Reg. v. Inhabitants of Stoke Bliss*, 6 Q. B. 158; 13 L. J. M. C. 151.)

By 12 & 13 Vict. c. 45, s. 5, it is enacted, "That upon any appeal to any court of general or quarter sessions of the peace, the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to

Sessions to have a general power to give costs in all cases of appeal.

7. Costs.

11 & 12 Vict.
c. 43.

the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an Act passed in the twelfth year of Her Majesty's reign, intituled 'An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders.'

The 12 & 13 Vict. c. 45, s. 5, does not apply to a case where the Crown is a party, as, for instance, to an appeal against a dismissal of an information for a penalty under an Excise Act. (*Reg. v. Beadle*, 7 E. & B. 492; 26 L. J. M. C. 111.)

Where appeal
dismissed.

The 12 & 13 Vict. c. 45, s. 5, applies to any appeal where there has been a decision, though the effect of the decision was that the appeal was dismissed on the ground that the sessions had no jurisdiction to try the appeal. (*Reg. v. Padwick*, 8 E. & B. 704; 27 L. J. M. C. 113.) And it extends to all appeals, whether the appellant has entered into a recognizance conditioned to pay costs or not. (*Freeman v. Read*, 9 C. B. N. S. 301; 30 L. J. M. C. 123.)

Party or parties.

The expression "party or parties" in the above section is not limited to the formal parties to the appeal, (viz., the appellant and respondent,) but applies to the substantial complainant. Thus, upon an appeal against a conviction under the "Vagrant Act," (5 Geo. IV. c. 83,) though the convicting justices who were made respondents, and the convicted person the appellant, and notice of appeal was given to the justices only, yet, as the informant really appeared and defended the appeal, the court of quarter sessions, on quashing the conviction, ordered the informant and not the justices to pay the costs to the appellant, and it was held that the court was right in so doing. (*Reg. v. Smith*, 29 L. J. M. C. 216; *Reg. v. Justices of Hants*, 1 B. & Ad. 654; *Reg. v. Purdey*, 5 B. & S. 909; 34 L. J. M. C. 4.)

Sect. 5 is cumulative, and includes appeals where recognizances have been entered into for the payment of the costs. (*Freeman v. Read*, 9 C. B. N. S. 301; 30 L. J. M. C. 123; *Reg. v. Huntley*, 3 E. & B. 179; 23 L. J. M. C. 106; *Reg. v. Justices of Ely*, 5 E. & B. 489; 21 L. J. M. C. 1.)

Taxation, when.

Costs may be taxed by the clerk of the peace as the officer of the sessions in their aid, but as it is a judicial act, they must adopt his taxation as their own, and insert the amount in the order, (*Sellwood v. Mount*, 1 Q. B. 726,) during the sitting of the court; (*Freeman v. Read*,

At adjournment.

ubi sup., and cases above cited;) or, if the order has been made at the original sessions, at an adjournment of the same sessions; (*Reg. v. Justices of Hampshire*, 33 L. J. M. C. 184; *Reg. v. Mortlock*, 7 Q. B. 459;) but if there had been no application for costs at the original sessions, it is doubtful whether they could be granted upon an application made at the adjournment—at all events, unless the same justices

At subsequent
sessions.

were present at each sitting. And where, upon appeal to the sessions against an order of justices adjudicating the settlement of a lunatic pauper, the sessions confirmed the order appealed against, subject to a case, but said nothing about costs, and the appellants did not take up the case, the next subsequent sessions had no jurisdiction to order costs to the respondents, as they were not the same sessions which confirmed the order. (*Reg. v. Justices of Staffordshire*, 7 E. & B. 935; 26 L. J. M. C. 179.) And where the sessions confirmed an order, subject to a case, and the costs were to abide the result of the decision of the Court of Queen's Bench, and the order was removed by *certiorari*, and quashed by the Court of Queen's Bench, saying nothing about costs, it was held that a *mandamus* to a fresh court of quarter sessions to tax these costs would not lie, as nothing remained to be done by way of giving judgment, to which the ancillary duty of taxing costs could be appended. (*Reg. v. Justices of Hampshire*, 32 L. J. M. C. 46.) But if the parties to be burdened with costs consent to a taxation out of court,

Consent on
special case.

after the end of the sessions judgment may be entered *nunc pro tunc*, and the parties so consenting are precluded from afterwards taking the objection. (*Freeman v. Read*, 9 C. B. N. S. 301; 30 L. J. M. C. 123; *Reg. v. Shrewsbury and Hereford Railway Company*, 25 L. T. 65.)

The order of reference of the matter of an appeal at quarter sessions under the 12 & 13 Vict. c. 45, s. 13, should provide for the costs of the reference, for if it is silent on that point, the subsequent sessions at which the award is entered as the judgment of the court have no power to order either party to pay the costs of the reference. (*Reg. v. Justices of West Riding*, 6 E. & S. 531; 34 L. J. M. C. 142; *ante*, p. 249.)

And by 12 & 13 Vict. c. 45, s. 6, "For the more effectual prevention of frivolous appeals, it is enacted, that any court of general or quarter sessions of the peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid."

Where the notice of appeal is given, which might have been acted upon, the court to which the appeal lay has jurisdiction to give costs under the 12 & 13 Vict. c. 45, s. 6. Thus, where notice of appeal against an order of removal made by justices acting in and for a borough was given as to the next quarter sessions for the county, and the day before the borough sessions were held the appellants gave the respondents notice that, having discovered that the appeal ought to have been to the borough sessions, they abandoned the appeal to the county sessions; the respondents appeared at the borough sessions and obtained an order for their costs on the abandonment of the appeal, and the order was held to be rightly made. (*Reg. v. The Recorder of Leeds*, 3 E. & E. 561; 30 L. J. M. C. 86; *Reg. v. The Recorder of Liverpool*, 15 Q. B. 1070; *Reg. v. The Justices of Buckinghamshire*, 4 E. & B. 259, n.; 24 L. J. M. C. 15, n.)

Where, however, such a notice was used by the appellants as a notice for the wrong sessions, and the appeal dismissed on that ground, it cannot be made use of afterwards as a notice to the right sessions, because it has already performed its office. (*Reg. v. The Justices of Salop*, 1 E. & B. 257; 24 L. J. M. C. 14.)

A change of overseers during an appeal against a poor-rate to which they are respondents does not oust the appellants, if successful, of their right to costs. Where a poor-rate was made on behalf of a parish, and there was an appeal against it, which appeal was adjourned at the first sessions, and before the next sessions the respondents to the appeal discovered that the rate was invalid, and gave notice to the appellants that the appeal would not be opposed, a change of overseers took place, and fresh overseers came into office. After they came in, and at the next sessions, the appeal came on to be heard, but no one appeared for the respondents, and the rate was quashed, and the appeal allowed, and by the order of the court the costs were awarded to the appellants.

A demand was subsequently made for the costs on the fresh overseers, but they refused to pay them, and subsequently the appellants brought the order into the Court of Queen's Bench for the purpose of enforcing it against the fresh overseers, who, after a lapse of some time, and after they had gone out of office, applied for a rule to set aside the order of the Court of Queen's Bench, but the court said the order was perfectly good, and that they could not enquire into the validity of the order of sessions upon that motion, as the time for applying for a *certiorari* had elapsed. (*Ex parte Overseers and Churchwardens of the Poor of Fletton*, 2 E. & E. 712; 29 L. J. M. C. 205.)

7. Costs.

On order of reference.

Frivolous appeals.

Costs though not prosecuted.

12 & 13 Vict. c. 45, s. 6.

Notice of appeal.

By whom costs payable.

Change of overseers.

7. Costs.

Rule to fix a particular amount in all cases bad.

To whom costs made payable.

Replevin lies.

Appeals against convictions or orders within 11 & 12 Vict. c. 43. After appeal against a conviction or order justice may issue warrants of distress for execution.

How recovered.

Costs upon appeals against summary convictions.

the successful party in an appeal is a very unreasonable one. The sessions must always exercise their judgment on the amount of costs to which the successful party is entitled. (*Reg. v. Justices of Merioneth*, 6 Q. B. 163). And if the court, upon the ground of any general rule, decline to hear and consider the claim to costs of the successful party, but make it part of the order that the costs shall be forty shillings, the court will grant a *mandamus* to compel them to consider how much the party is entitled to for costs. (*Reg. v. Justices of Glamorganshire*, 1 L. M. & P. 336; 19 L. J. M. C. 172; *Reg. v. Justices of Merioneth*, *ubi sup.*)

The order for costs under 12 & 13 Vict. c. 45, is rightly made directing the unsuccessful party to pay the costs to the clerk of the peace, to be handed over by him to the other party. (*Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J. M. C. 58.)

Replevin lies in case of goods taken under a warrant of distress issued by a justice to enforce payment of the costs ordered on an appeal against a poor-rate under this section. (*Gay v. Matthews*, *ubi sup.*)

By 11 & 12 Vict. c. 43, s. 27, it is enacted, that after an appeal against any conviction or order within that Act shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue a warrant of distress or commitment for execution of the same as if no such appeal had been brought; and if upon any such appeal the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid, and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid, and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, (see tit. "Warrant," Vol. V.) and in default of distress he or they may commit the party against whom such warrant shall have issued, in manner hereinbefore mentioned, for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

Where the original order on conviction is within the above Act, an order of sessions making the costs payable to the respondent justices with committal in default is bad; (*Reg. v. Hellier*, 17 Q. B. 229; 21 L. J. M. C. 3;) but the statute does not extend to appeals against poor-rates; (*Reg. v. Huntley*, 3 E. & B. 172; 23 L. J. 106;) or a refusal to grant a beer license. (*Reg. v. Justices of Ely*, 5 E. & B. 489; 21 L. J. M. C. 1; *Gay v. Matthews*, 4 B. & S. 425, 440; 33 L. J. M. C. 14; 32 L. J. M. C. 58.)

Notwithstanding the words of 12 & 13 Vict. c. 45, s. 5, costs on summary convictions and orders within the 11 & 12 Vict. c. 43, are to be recoverable in the manner provided by s. 27 of the last mentioned Act, and the directions of that Act as to the form of order must be followed. (*Gay v. Matthews*, *ubi supra.*)

A mistake in ordering costs to be paid directly to the party to the appeal instead of to the clerk of the peace, was held not to be a defect

of jurisdiction, but merely erroneous procedure, and the court refused to set it aside, the Act under which it had been made having taken away the *certiorari*. (*R. v. Binney*, 1 E. & B. 810; 22 L. J. M. C. 127.)

A *mandamus* will lie to the sessions to enter continuances in order to award costs where they are required by statute to give costs, as under the "Highway Act" (5 & 6 Will. IV. c. 50, s. 90). (*Reg. v. Justices of West Riding of Yorkshire*, 2 B. & S. 811; 31 L. J. M. C. 271; and see *Sellwood v. Mount*, 1 Q. B. 726.)

Where an appeal against a poor-rate was entered at the *Midsummer* sessions, and respited until the *Michaelmas* sessions, and then further respited, at the instance of the appellant, till the *Epiphany* sessions, four days previously to which the respondents gave notice that they would not oppose the appeal, and the appeal was accordingly allowed without opposition; it was held, that the appellant was entitled to costs as upon an appeal, which had been "heard and determined," within the meaning of 17 Geo. III. c. 38, s. 4. (*R. v. Causton*, 4 D. & R. 445; 2 D. & R. M. C. 269; *R. v. Essex*, 8 T. R. 588; *Ex parte Holloway*, 1 Dowl. P. C. 26; and *R. v. Justices of Cambridge*, 2 Ad. & Ell. 374.)

Construction of the words "heard and determined."

The following cases, upon the question of what amounts to a hearing of an application within the 13th section of the 4 & 5 Will. IV. c. 76, will serve to illustrate the 5th section of 12 & 13 Vict. c. 45, though the words are different.

By the 4 & 5 Will. IV. c. 76, s. 72, (now repealed,) the overseers of the poor might apply for an order of maintenance on the putative father of a bastard child; and by s. 73 it was enacted, that if upon the hearing of such application the court shall not think fit to make any alteration thereon, it shall order and direct that the full costs and charges incurred by the person so intended to be charged in resisting such application shall be paid by such overseers or guardians; and where one of the overseers, in obedience to a rule of sessions, entered in a book kept by the clerk of the peace his application intended to be made for such an order, and when the case was called on in court, the overseer did not make any application, but the putative father had had notice of the application, and appeared in court, and the sessions made no order upon the application, but gave the putative father his costs, it was held that the entry on the book was an application, and the calling on of the case, and the attendance of the opposing party, was a hearing within that section, and the order of sessions for costs was right. (*Reg. v. Stamper*, 1 Q. B. 119.)

As soon as a case comes on to be heard, it seems there is a "hearing" sufficient to enable the court to grant costs under the 4 & 5 Will. IV. c. 76; (*Reg. v. Recorder of Exeter*, 5 Q. B. 342;) though the case may be dismissed on the ground that the wrong parties are the applicants. (*Ib.*)

As to costs of appeals concerning the poor, see tit. "Poor," Vol. IV.

By 12 & 13 Vict. c. 45, s. 18, it is enacted, that in all cases where any order shall be made by any court of general or quarter sessions of the peace, it shall be lawful for the Court of Queen's Bench, or for any judge of that court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner as a rule made by the said Court of Queen's Bench, and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

Enforcing orders of sessions.

7. Costs.

No *certiorari* is required for the purpose of removing the order of sessions. (*Hawker v. Field*, 1 L. M. & P. 606; 20 L. J. M. C. 41.)
See forms on appeal, *post*, p. 273.

VIII. Appeal from Justices out of Sessions by means of a Case stated by Justices under 20 & 21 Vict. c. 43.

Interpretation of terms.

It was deemed expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace, and it was therefore enacted (by 20 & 21 Vict. c. 43, s. 1) that, "In the interpretation and for the purposes of this Act, the following words shall have the meaning hereinafter assigned to them, that is to say,

'Superior Courts of Law,' shall for England mean the supreme courts of law at Westminster, and for Ireland the supreme courts of law at Dublin.

'Court of Queen's Bench,' shall mean for England the Court of Queen's Bench at Westminster, and for Ireland the Court of Queen's Bench at Dublin."

Justices, on application of a party aggrieved, to state a case for the opinion of superior court.

Sect. 2. "After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called 'the appellant,' shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called 'the respondent.'"

Security and notice to be given by the appellant.

Sect. 3. "The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices shall, in every instance, enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed, marked (A.), (see *post*, p. 264,) until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute 11th and 12th Victoria, chapter 43, section 30; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed."

Sect. 4. "If the justice or justices be of opinion that the application merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to the appellant a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for England or Ireland, as the case may be."

Sect. 5. "Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon each justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided."

Sect. 6. "The court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties (*Shackell v. West*, 2 E. & E. 326; 3 L. J. M. C. 45); provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect of or by reason of such appeal against his or their determination."

Sect. 7. "The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended."

Sect. 8. "The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and so well in vacation as in term time."

Sect. 9. "After the decision of the superior court in relation to any case stated for their opinion under this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively."

Sect. 10. "No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this Act or otherwise, for obtaining the judgment or determination of the superior court on such case under this Act."

Sect. 11. "The superior courts of law may from time to time, and so often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned."

Sect. 12. "The words 'justice or justices' in this Act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate."

8. Appeal from Justices.

Justices may refuse a case where they think the application frivolous.

Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.

Superior court to determine the questions on the case.

Its decisions to be final.

No costs against justices.

Case may be sent back for amendment.

Powers of superior court may be exercised by a judge at chambers.

After the decision of superior court, justices may issue warrants.

Certiorari not to be required for proceedings under this Act.

Superior courts may make rules for proceedings.

"Justices" to include a stipendiary magistrate.

8. *Appeal from Justices.*

Recognizances,
how to be
enforced.

Sect. 13. "In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied upon such recognizance being forfeited, and on non-payment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an Act passed in the second and third years of the reign of her present Majesty, intituled, 'An Act for regulating the Police Courts in the Metropolis,' and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same."

2 & 3 Vict. c. 71,
s. 45.

Appellants under
this Act not
allowed to appeal
to quarter
sessions.

Sect. 14. "Any person who shall appeal under the provisions of this Act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes."

Extent of Act.

Sect. 15. "This Act shall not extend to Scotland."

SCHEDULE (A).

Fees to be taken by Clerks to Justices.

For drawing case and copy, where the case does not exceed five folios of ninety words each	0	10	0
Where the case exceeds five folios, then for every additional folio	0	1	0
For the recognizance to be taken in pursuance of the Act	0	5	0
For every enlargement or renewal thereof	0	2	6
For certificate of refusal of case	0	2	0

"Determination,"
what.

The second section gives the justices jurisdiction to state a case after their determination of any information or complaint, whether they dismiss it or not. (*Davys v. Douglas*, 4 H. & N. 180; 28 L. J. M. C. 193.) A complaint against the accounts of the surveyor of highways, made by an inhabitant of a parish at the special sessions for highways at the time of the verification of the surveyor's accounts, pursuant to the 44th section of the General Highway Act, upon which the magistrates made no order, but simply allowed the accounts, is a determination within the second section of 20 & 21 Viet. c. 43. (*Townsend v. Read*, 10 C. B. N. S. 308; 30 L. J. M. C. 223.) A refusal of justices to order payment of money under an order made by the guardians of the London Union upon one of the parishes comprised therein, for the payment of a sum which included balance due from the parish at the preceding half-year, which balance was made up of accumulated balances of several successive half-years, is a determination within the statute. (*London Union v. Acocks*, 8

C. B. N. S. 760.) So where justices were acting under rules of a friendly society, which provided that disputes between the society and a member were to be referred to justices, pursuant to the 21 & 22 Vict. c. 101, s. 5, such justices so acting may be compelled to state and sign a case, under 20 & 21 Vict. c. 43. (*Watts v. Lambarde*, 1 L. R. Q. B. 388, *sub nom.*; *Watts v. Justices of Kent*, 35 L. J. M. C. 190.) But the statute cannot be resorted to where the justices refused to enforce payment of a highway rate by issuing their warrant; (*Walker v. Great Western Railway Company*, 2 E. & E. 325; 29 L. J. M. C. 107;) though, where upon a complaint made before justices for non-payment of rates under a local lighting and paving Act, and application for a distress warrant, which the justices granted, it was held that the duty of the justices was merely ministerial; but, nevertheless, where a question of law arose, affecting the exercise of their power, it was proper to state a case. (*Sweetman v. Guest*, 3 L. R. Q. B. 262; 37 L. J. M. C. 59.) So where, on the hearing of a complaint against a person assessed to a sewers rate, for his refusal to pay the rate, the only question raised by the defendant was as to the validity of the rate, and the justices convicted him and ordered him to pay the sum assessed, the proper course was to appeal against the rate to the sessions, and the point could not be raised, or a case stated. (*Reg. v. Newman and others*, 2 E. & E. 420; 29 L. J. M. C. 117; see also *Luton Board of Health v. Davis*, 2 E. & E. 678; 29 L. J. M. C. 173; *Wheeler v. Overseers of Burmington*, 29 L. J. M. C. 175, n.; *Ex parte May*, 2 B. & S. 426; 31 L. J. M. C. 161.)

The court for whose opinion a case is stated has no jurisdiction to hear and determine it unless the provisions of the 2nd section of the Act which gives the right of appeal are complied with. (*Peacock v. The Queen*, 4 C. B. N. S. 264; 27 L. J. C. P. 224; *Morgan v. Edwards*, 5 H. & N. 415; 29 L. J. M. C. 108.)

It is essential, therefore, that the case should be applied for within three days after the determination. Sunday is to be counted in computing the three days allowed for applying for a case; so that where a hearing took place on Thursday, and application was not made to the justices to state and sign a case till the Monday following, the court held that they had no jurisdiction to decide upon a case stated upon such application, and therefore dismissed the appeal without costs. (*Peacock v. The Queen*, *ubi supra*.)

So also the case must be lodged in court within three days after its receipt by the appellant. (*Morgan v. Edwards*, *ubi supra*.) If one of the three days allowed for the transmission of the case after its receipt be a Sunday, that day must be included in the computation of the time, so that, in fact, two days only in such a case are given to the appellant to enter it. (*Pennell v. Churchwardens of Uxbridge*, 31 L. J. M. C. 92.) And it is not sufficient for the country attorney of the appellant to have sent the case to his London agent within the three days, and in time to be transmitted to the court, if from any cause the agent omits to lodge it. (*Banks v. Goodwin*, 3 B. & S. 548; 32 L. J. M. C. 87.) But if the performance of this condition of transmitting the case in three days is rendered impossible by the act of the court without laches of the party, the party will not be deprived of his right to have the case heard. Thus, where the case was received by the appellant on Good Friday, when the courts and their offices were closed for the Easter holidays, but was lodged by him on the following Wednesday, which was the first day of their being re-opened, he was held to be in time, and rule to strike the case out of the Crown paper on the ground that the case was not transmitted in time was discharged. (*Mayer v. Harding*, *Bail Court*.)

It is also a condition precedent to the hearing of a case stated that the appellant should have given notice in writing of the appeal, with a copy of the case stated and signed, to the respondent, before trans-

8. *Appeal from Justices.*

As to time for the transmission of a case.

Sunday one of the three days.

Notice to respondent.

8. Appeal
from Justices.

mitting the case to the court. (*Woodhouse v. Woods and others*, 29 L. J. M. C. 149).

The putting of a letter in the post on the same day that the case is transmitted is not a giving of notice before the case is transmitted. If the case is lodged on a Saturday, and the letter giving notice is put into the post on the Saturday, and would in ordinary course not reach the respondent till the Sunday, it is too late, and the appeal cannot be heard. (*Ashdown v. Curtis*, 31 L. J. M. C. 216.)

The court has always abstained from saying that, if the respondent could not be found, it would not be sufficient if the appellant had done all he could to serve the notice and deliver the case. (See *Woodhouse v. Woods*, 29 L. J. M. C. 149; *Morgan v. Edwards*, 5 H. & N. 415; 29 L. J. M. C. 108.) And where notice of appeal and a copy of the case were served upon the attorney for the respondent, who appeared for her before the justices, the respondent herself not being to be found, it was held that sufficient notice had been given. (*Syred v. Carruthers*, E. B. & E. 469; 27 L. J. M. C. 273.)

Striking case out
of crown paper.

If a case has been put into the Crown paper without the performance of the conditions precedent imposed by the statute, it will on motion to the court be struck out.

Refusal to state a
case.

It has been said that a judge at chambers can grant a rule upon the justice to state a case, and can determine it; (*Ex parte Smith*, 27 L. J. M. C. 186, 188, per *Channell*, B.) but it is hardly clear from the language of the 8th section of the Act that it was intended to give that power of the court to a single judge.

Recognizance.

The recognizance which must be entered into at the time of making the application for the case, and before a case shall be stated, has been held to be in time where it was made on the third day after the decision, whilst the application for the case was made on the same day as the decision. (*Chapman v. Robinson*, 1 E. & E. 25; 28 L. J. M. C. 30.) Where the conviction took place on the 3rd of March, and the appellant applied for a case on the 6th of March, and the case was stated and delivered to him on the 24th of March, the appellant having entered into the required recognizance on the 10th of March, it was held that the appellant was in time with his recognizance, *Erle*, C. J., saying, "The section points to a space of time within which the recognizance is to be entered into, and the two termini of such space are at the time of making the application, and before the case is granted." (*Stanhope v. Thorsby*, 1 L. R. C. P. 423; 35 L. J. M. C. 182.)

Rule of Court as
to appeal.

The following rule of court has been promulgated with respect to appeals under this statute:—

Regula Generalis, Michaelmas Term, 1857. (1.) It is ordered that in cases of appeal to a superior court under the provisions of the statute 20 & 21 Vict. c. 43, the 15th and 16th Practice Rules of Hilary Term, 1853, so far as the same are applicable, shall be observed. (2.) And in cases where the appeal is to be heard before a judge at chambers, the appellant shall obtain an appointment for such hearing, and shall forthwith give notice thereof to the respondent, and shall, four clear days before the day appointed for the hearing, deliver at judge's chambers a copy of the appeal.

Where copies of
the case are to be
delivered.

The copies of the case must be delivered at the judge's chambers at Roll's Gardens, where a record is kept of what are received, so that the other party may ascertain by searching the same whether the copies have been duly delivered or not, and may therefore be able, in case of default in such delivery, to deliver the copies which have been omitted at the cost of the defaulting party. (See rule 16 of Practice Rules of Hilary Term, 1853; and *Howells v. Wynne*, 15 C. B. N. S. 3; 32 L. J. M. C. 241.) In case of such default, and of the other party supplying the copies omitted, the party so making default will not be heard on the argument until the costs of the copies so supplied have been

aid by him. (See above case; and *Hill v. Thorncroft*, 3 E. & E. 260; 1 L. J. M. C. 53 (n).)

8. *Appeal from Justices.*

The court has to consider whether the determination was erroneous point of law. The justices, therefore, should determine the facts which raise the point of law; (*Taylor v. Oram*, 1 H. & C. 370; 31 L. J. C. 252; *Newman v. Baker*, *infra*;) but if the justices set out the evidence without stating their conclusions therefrom in point of fact, the court will perhaps draw the conclusion of fact if their opinion is asked upon it; (*Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J. M. C. 6;) at their opinion on the facts can be asked only so far as they raise point of law. (See *Newman v. Baker*, 8 C. B. N. S. 200; *Belasco v. Lamant*, 31 L. J. M. C. 228.)

Form of case.

Only points made before the justices at the hearing can be raised by the case. (*Purkis v. Huxtable*, 1 E. & E. 780; 28 L. J. M. C. 221; *Mottram v. Eastern Counties Railway Company*, 7 C. B. N. S. 58-64.) And the court will not give their opinion on a question not submitted to them by the justices, although at the request of both parties. (*Overseers of St. James, Westminster, v. St. Mary, Battersea*, 6 C. B. N. S. 878; 29 L. J. M. C. 26.)

When justices have stated a case, the Court of Queen's Bench would not listen to a preliminary application made to have it amended before it has come on for argument, but if on the hearing it turns out to be effectively stated, the court said that it could, under the 7th section, end it back for amendment; (*Christie v. Guardians, &c., of St. Luke, Chelsea*, 8 E. & B. 992; 27 L. J. M. C. 153;) but the Court of Common Pleas, in a subsequent case, upon affidavits of the omission from the case of certain documents which were before the justices, and acted upon by them, sent back the case before argument that it might be amended by the necessary additions. (*The Yorkshire Tire and Axle Company v. Rotherham Local Board of Health*, 4 C. B. N. S. 362; 27 L. J. C. P. 235.)

Amendment of case.

On an appeal by a case stated where the justices have dismissed a complaint or information, the appellant begins; but where the justices have made an order or a conviction the respondent begins, by reason that he party begins upon whom the burden of proof lies. (Per *Bramwell*, 3, in *Ellis v. Kelly*, 6 H. & N. 222; 30 L. J. M. C. 35; *Jones v. Taylor*, 1 E. & E. 20; 28 L. J. M. C. 204, n.; *Shackell v. West*, 29 L. J. M. C. 5.) It is said that in the Common Pleas the appellant always begins. (*Paley on Conv. by Macnamara*, 5th ed., 446, citing *Sheppard v. Churchwardens of Bradford*, 33 L. J. M. C. 182-184; *Gardner v. Whitford*, 4 L. B. N. S. 672; see *Atkinson v. Sellers*, 5 C. B. N. S. 442, n.)

Who to begin an argument.

Although the respondent does not appear to support the decision of the justices, the appellant must show that due notice and service of copy has been made, or facts sufficient to dispense therewith, and that the decision was wrong. (*Syred v. Carruthers*, 1 E. & E. 469; 27 L. J. M. C. 273.) And where the respondent did not appear, but the judgment of the court was in his favour, the court will not give costs to the respondent where no paper books have been delivered. (*Potts v. Cambridge*, 27 L. J. M. C. 62.)

Non-appearance of respondent on argument.

In general, the successful party on the argument is entitled to his costs, and the unsuccessful party must pay them, though he only appears to support the decision of the justices; (*Venables v. Hardman*, 1 E. & E. 79; 29 L. J. M. C. 33;) but there is no universal rule to that effect; (see *Cross v. Watts*, 13 C. B. N. S. 239; 32 L. J. M. C. 73; *London Union v. Acocks*, 8 C. B. N. S. 760;) but where the respondent does not appear to support the decision, there does not seem to be any general rule of law that costs will follow the event; (*Wednesbury Local Board of Health v. Stephenson*, 33 L. J. M. C. 111, qualifying *Lee v. Strain*, 28 L. J. M. C. 221;) but the general rule will probably be adhered to, even in such a case. (*Buckle v. Wrightson*, 34 L. J. M. C. 43, 45.) On the argument of the case of the *Wednesbury Local Board*

Costs.

8. Appeal from Justices.

of *Health v. Stephenson*, (*ubi supra*), it was stated by the master of the Crown Office that, as a matter of practice, the rule of court embodying the judgment of the Court of Queen's Bench, on an appeal against a magistrate's decision, was always drawn up giving the costs of the appeal to the successful party, unless the court gave some express direction to the contrary.

What costs allowed.

Where costs are allowed, the successful party is entitled to the costs of preparing and amending the case, beyond the fees allowed to the justices' clerk. (*Glover v. Booth*, 2 B. & S. 807; 31 L. J. M. C. 270.) In *Peacock v. The Queen*, (4 C. B. N. S. 264; 27 L. J. C. P. 224,) where the court dismissed the appeal because they had no jurisdiction, they held that the power to give costs did not apply.

Costs to the Crown.

Sect. 3 of the statute does not apply to the costs of the justices; and the court has, therefore, no power to order payment of the costs which the justices, whom the statute requires to state a case, have incurred in employing counsel to draw it. (*Luton Local Board of Health v. Davis*, 6 Jur. N. S. 582, *ubi sup.*) But, on an appeal from a conviction on an information by an officer of the Crown, when the Crown is successful the court will grant costs to the Crown. (*Moore v. Smith*, 1 E. & E. 597; 28 L. J. M. C. 126.)

No certiorari where case stated.

The Act provides that no writ of *certiorari* shall be required to remove any conviction, order, &c., in respect of which a case is stated; but it is said that when the objection goes to the jurisdiction, a *certiorari* may issue, although a case has been stated under the above Act, and although it is still pending for decision. (*Reg. v. Hodgson*, 12 W. R. 423; *Reg. v. Armitage and others*, 2 L. T. N. S. 459.)

IX. Appeal to Court of Crown Cases Reserved.

When case may be reserved.

When any difficult question of law arises on any criminal trial in any court of *oyer and terminer*, or gaol delivery, or court of quarter sessions for county or borough, and the trial results in the conviction of the prisoner of any treason, felony, or misdemeanour, the judge, commissioner, or justice presiding at the trial, may reserve the question for the consideration of the Court for Crown Cases Reserved, and thereupon postpone or respite the execution of the judgment on such conviction, until the court has met and decided the question.

What courts may reserve cases, and when.

This court owes its existence to the statute 11 & 12 Vict. c. 78. The 1st section enacts, "That when any person shall have been convicted of any treason, felony, or misdemeanour, before any court of *oyer and terminer*, or gaol delivery, or court of quarter sessions, the judge, commissioner, or justices of the peace, before whom the case shall have been tried may, in his or their discretion, reserve any *question of law which shall have arisen on the trial* for the consideration of the justices of either bench and barons of the Exchequer, and thereupon shall have authority to *respite execution* of the judgment on such conviction, or *postpone the judgment* until such question shall have been considered and decided, as he or they may think fit; and in either case, the court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the court shall think fit, conditioned to appear at such time or times as the court shall direct and receive judgment, or to render himself in execution, as the case may be."

Recorder.

A recorder for a borough appointed under the 5 & 6 Will. IV. c. 76, ss. 103-105, is a justice of the peace, and the court of quarter sessions for the borough is a court of quarter sessions within the meaning of the above sections and Act. (*Reg. v. Masters*, 1 Den. C. C. 332; 18 L. J. M. C. 2.) So also is a court sitting under a special commission for

e trial of a prisoner at the Old Bailey. (*R. v. Bernard*, 1 F. & F. 50.)

Any question of law which shall have arisen on the trial may be served; but if a fact has occurred during the trial, though not discovered or discussed till after verdict and sentence, upon which a question of law arises, it is a matter of doubt whether, although the judge may have respited execution and reserved the question, this court has jurisdiction to consider it. Fourteen judges were very much divided on this subject in a case where, on a trial for felony, one of the jurymen empaneled answered to and was sworn on the jury in the name of another juryman, and a verdict of guilty was found, and sentence passed, and on the next day the mistake was discovered, and the judge reserved the question as to the effect of the mistake. *Collock, C. B., Erle, Williams, Crompton, Crowder, Wiles, Byles, JJ., and Channell, B.*, deemed it not a case within the jurisdiction of the court, or proper for its interference; and *Lord Campbell, C. J., Cockburn, C. J., Coleridge, Wightman, JJ., Martin and Watson, BB.*, held it a mistrial, and a proper subject for the interference of the court. (*Reg. v. Mellor*, D. & B. 468; 27 L. J. M. C. 121.)

So where a prisoner pleaded guilty to an indictment framed under the 34th section of the 24 & 25 Vict. c. 100, and the court of quarter sessions before whom the prisoner pleaded, upon reading the depositions taken before the justices, thought that the indictment did not rightly charge the offence under that section, but ought to have been drawn upon the 33rd section of the same Act, and therefore postponed judgment, and reserved the question for the Court of Crown Cases reserved whether the prisoner had been rightly indicted, that court held that this question under the above circumstances did not arise on the trial of the prisoner, and that they had no jurisdiction to consider it. (*Reg. v. Clark*, 36 L. J. M. C. 16; 1 L. R. C. C. 54.)

If a question of law has been raised by demurrer on the trial, and judgment given thereon, the judgment cannot, on a case reserved, be reviewed by this court; (*Reg. v. Faderman*, 1 Den. C. C. 565; 19 L. J. M. C. 17;) but it is to be observed that it does not follow of necessity from this decision that all questions that can be raised by demurrer must be raised, for defects apparent on the face of the record and available on motion in arrest of judgment are cognizable by this court, as where the indictment is insufficient in law; (*Reg. v. Webb*, 1 Den. C. C. 340; 18 L. J. M. C. 39; *Reg. v. Larkins, Dears.* C. C. 365; 23 L. J. M. C. 125; *Reg. v. Ryland*, 37 L. J. M. C. 10; 1 L. R. C. C. 99;) or where a want of jurisdiction appears; (*Reg. v. Martin*, 1 Den. C. C. 398; 18 L. J. M. C. 137;) or where repugnancy on the record is alleged; (*Reg. v. Raddock*, 2 Den. C. C. 31; 20 L. J. M. C. 31;) but only questions of law and not of practice are reservable, and, therefore, the mode of directing a jury as to the necessity of corroboration of the testimony of an accomplice, is not such a matter as can be considered by this court. (*Reg. v. Stubbs*, 19 Jur. 1115.)

As a general rule what a jury may say in recommending a prisoner to mercy is not a matter upon which a case should be reserved for the opinion of this court. (Per *Lord Campbell, C. J.*, in *Reg. v. Trebilcock*, D. & B. 460; 27 L. J. M. C. 103.)

After a question of law has been reserved for this court, it is the duty of the judge, &c., to state on a case signed the question of law and the circumstances under which it arose.

By the 2nd section of the 11 & 12 Vict. c. 78, "The judge, or commissioner, or court of quarter sessions, shall thereupon state in a case signed in the manner now usual the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen, and such case shall have been transmitted to the said justices and barons."

Where the judge on circuit who reserved the case died before signing

9. Court of Crown Cases Reserved.

What questions may be reserved.

Duty of judge, &c., to state the case.

9. Court of
Crown Cases
Reserved.

Mode of state-
ment.

Rules of Court,
1850.

Jurisdiction of
the court.

What order may
be made.

it, it was held that the other judge named in the commission was virtually present at the trial, so that his signature was a virtual compliance with the statute. (*Reg. v. Featherstone*, 1 D. & P. 378; 23 L. J. M. C. 127.)

By the rules of court of the 1st of June, 1850, signed by all the judges, it is ordered "that when any case shall be transmitted by a court of *oyer and terminer*, or gaol delivery, or court of quarter sessions, for the consideration of this court, the original case signed by the judge, or commissioner, or chairman of sessions reserving the question of law, and seventeen copies of such case—one for each judge, and one for each party—shall be delivered to the clerk of this court at the Exchequer Chamber, Westminster, at least four days before the day appointed for the sitting of the said court.

"That every case transmitted for the consideration of this court briefly state the question or questions of law reserved, and such facts only as raise the question or questions submitted; if the question turn upon the indictment, or upon any count thereof, then the case must set forth the indictment on the particular count.

"That no case be heard upon any demurrer to the pleadings.

"That every case state whether judgment on the conviction was passed or postponed, or the execution of the judgment respited, and whether the person convicted be in prison, or has been discharged on recognizance of bail to appear and receive judgment, or to render himself in execution.

"That with every case delivered to the judges of this court (except such cases as shall be reserved by such judges), the fee payable to the clerks of the said judges shall not exceed the fee payable on 'demurrer and other paper books,' as contained in the table of fees allowed and sanctioned by the judges pursuant to the statute 1st Victoria, cap. 30."

Where an indictment is amended at the trial, the court can only consider it in its amended form, (*Reg. v. Webster*, 1 L. & C. 77; 31 L. J. M. C. 17; *R. v. Pritchard*, 1 L. & C. 36; 30 L. J. M. C. 169,) unless the question of the power of amendment was reserved, when the court may order the amendment to be struck out, and give judgment on the indictment as it previously stood. (*Reg. v. Larkin*, *Dears. C. C.* 365; 23 L. J. M. C. 125.)

Upon a case being stated and transmitted to the court, the 2nd section of the same Act proceeds to enact that "the said justices and barons shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial, whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that, in the judgment of the said justices and barons, the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other sessions of *oyer and terminer*, or gaol delivery, or other sessions of the peace, if no judgment shall have been before that time given as they shall be advised, or to make such other order as justice may require."

The words "make such other order as justice may require," were confined by *Parke, B.*, (*R. v. Faderman*, *ubi sup.*) to ordering a party to be let out on bail, or to do any other thing of the like kind which justice may require. The question whether these words gave the power, where there had been a mistrial, to the court to order a *venire de novo* to issue after the court had avoided the judgment, was much discussed in *Reg. v. Mellor*, (*ubi sup.*) where a majority of the judges, comprising *Pollock, C. B.*, *Erle, Williams, Crompton, Willis, JJ.*, and *Channell, B.*, held that the court had no such power; but *Lord Campbell, C. J.*, *Cockburn, C. J.*, *Wightman, J.*, and *Watson, B.*, held the contrary. *Coleridge, J.*, thought the court should merely

under the judgment to be avoided, and then, in the course of things, the prisoner would be tried again; and *Martin*, B., thought the court might make an order that a trial should take place, but not a *venire de novo*.

Where an indictment was bad on its face, and after verdict of guilty a motion made in arrest of judgment the court amended the defect, which they had no power to do, the Court of Crown Cases Reserved ordered the indictment to be restored to its former state, and directed verdict of not guilty to be entered. (*Reg. v. Larkin, ubi sup.*)

By the 3rd section, "The jurisdiction and authorities by this Act given to the said justices of either bench and barons of the Exchequer shall and may be exercised by the said justices and barons, or *vs* of them *at the least*, of whom the lord chief justice of the Court of Queen's Bench, and the lord chief justice of the Common Pleas, and the lord chief baron of the Court of Exchequer, or one of such chiefs at least shall be part, being met in the Exchequer Chamber or other convenient place, and the judgment or judgments of the said justices and barons shall be delivered in open court, after hearing counsel, or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued in the like manner as the judgments in the superior courts of Common Law at Westminster or Dublin, as the case may be, are now delivered."

Where there is a division in the court upon the law of the case, it is usual to have it argued before the fifteen judges, but where the division is on the facts, judgment is delivered according to the opinion of the majority. (*Reg. v. Burrell, 1 L. & C. 354; 33 L. J. M. C. 54.*)

By order of Court of 1st June, 1850, "Where any case is intended to be argued by counsel, or by the parties, notice thereof be given to the clerk of this court at least two days previously to the sitting of the said court."

Counsel who has defended a prisoner at the trial, whose case is reserved, will not be allowed to appear before the court and argue the case without the prisoner's consent, but as *amicus curiæ*, the court will listen to any reference to authorities bearing upon the point. (*Reg. v. Thomas, L. & C. 313; 33 L. J. M. C. 22.*)

Counsel in arguing the case must confine themselves to the facts as they appear on the case stated to the court, (*R. v. Smith, 1 Den. C. C. 112*), and to the question or questions of law reserved by the case; (*Reg. v. Blakemore, 2 Den. C. C. 410; 21 L. J. M. C. 60*); and if the case is defectively stated, application can be made to the court under s. 4, to have it sent back for amendment.

Counsel for the prisoner begins, and has a reply. Though no counsel appear on behalf of the prisoner, counsel will be heard for the Crown; (*Reg. v. Martin, 1 Den. C. C. 398; 18 L. J. M. C. 137*); and though no counsel appear for the Crown, prisoner's counsel will be heard. (*Reg. v. Masters 1 Den. C. C. 332; 18 L. J. M. C. 2; Reg. v. Garner, id. 329; 8 L. J. M. C. 1.*)

The court which reserved the question of law has power to order payment of the costs of the argument before the Court of Crown Cases Reserved, in cases of felony and certain misdemeanours, under the 7 Geo. IV., c. 64, s. 22; (*Reg. v. Cludero, 3 C. & K. 205*); and misdemeanours under the new consolidated statutes are put on the same footing as felonies in that respect.

The convenient practice is for the officer of the Court of Crown Cases Reserved to tax and ascertain such costs, and certify the amount to the taxing officer of the court below, who will act upon it. (*Reg. v. Lewis, D. & B. 326.*) But the certificate of the officer of the former court is not in law binding on the officer below; (*Id.*; and see *R. v. Dolan, Dears. C. C. 436*); and the Court of Crown Cases Reserved will not entertain the question of costs, although it was expressly agreed by the case that the court should have the same power with respect to costs

9. Court of Crown Cases Reserved.

Constitution of the court.

Proceedings court.

Argument by counsel.

Who to begin.

Costs of argument.

9. *Court of Crown Cases Reserved.*

Power to send back case for amendment.

as the judge could legally have exercised at the trial. (*Reg. v. Hornsea, Dears. C. C. 307.*) That case arose upon the trial of an indictment for the repair of a road tried at assizes.

By the 4th section, "The said justices and barons, where a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended."

It seems that if either party discovers, before the hearing of the argument, that a point has been omitted from the case reserved, which should have been inserted in it as having been reserved at the trial, the proper course is to communicate with the judge, who will doubtless insert it if requisite. (*Per Wilde, C. J., R. v. Smith, 1 Den. C. C. 512.*) The court will not send back a case to be re-stated, for the purpose of having evidence given at the trial inserted upon the application of counsel before the case is gone into, but will wait till it appears on the argument that the case has been imperfectly stated; (*Reg. v. Hilton, 1 Bell C. C. 20; 28 L. J. M. C. 28; Reg. v. Perkins, 2 Den. C. C. 459; 21 L. J. M. C. 152;* but even then it will not be sent back in order to have evidence given at the trial inserted for the purpose of raising an objection purely technical and beside the merits. (*Reg. v. Brummitt, L. & C. 9.*)

Procedure after judgment on argument.

Discharge of prisoner.

Certificate of discharge.

By the 2nd section of the 11 & 12 Vict. c. 78, when the court has heard and determined the question by reversing, affirming, or amending the judgment by avoiding it, and making an entry of the order they may have made, it is enacted that "such judgment and order, if any, of the said justices and barons, shall be certified under the hand of the presiding chief justice or chief baron to the clerk of the assize, or his deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry under the hand of the clerk of assize, or his deputy, or the clerk of the peace, or his deputy, as the case may be, in the form, as near as may be, or to the effect mentioned in the schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler, in whose custody the person convicted shall be; and the certificate shall be a sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment should be reversed, avoided, or arrested; and in that case such sheriff or gaoler shall forthwith discharge him; and also the next court of *oyer* and *terminer* and gaol delivery, or sessions of the peace, shall vacate the recognizance of bail, if any; and if the court of *oyer* and *terminer* and gaol delivery, or court of quarter sessions shall be directed to give judgment, the said court shall proceed to give judgment at the next sessions."

Penalty for forging, &c., any certificate.

By the 6th section, "Every person who shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any certificate of or copy certified by a chief justice, or any certificate of or copy certified by a clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding ten years, or be imprisoned for any term not exceeding three years, with or without hard labour and solitary confinement, both or either, at the discretion of the court, before which he shall be tried."

By 20 & 21 Vict. c. 3, s. 2. "Transportation is changed to penal servitude for the same term, or to the same period of imprisonment."

SCHEDULE to 11 & 12 Vict. c. 78. (Referred to in Sect. 2, *ante*, p. 272.)

10. *Forms.*

Whereas, at the sessions of the peace for the county of _____ held on _____, before _____, and others their fellows (or at the session of _____, on _____, before, among others, Sir A. B., Knight, one of the justices of the court of _____, and _____, [here name the quorum, commissioners, justices of oyer and terminer, and gaol delivery], A. B., late of _____, labourer, having been found guilty of felony, and judgment thereupon given at [here state the substance] the court before whom he was tried reserved a certain question of law for the consideration of the justices of either bench, and the barons of the Exchequer, and execution was thereupon respited in the mean time.

Form of certificate of annulling of conviction and warrant of discharge.

This is to certify, that the said justices and barons, having met in the exchequer Chamber at Westminster, [or Dublin, as the case may be,] on the _____ day of _____, it was considered by the said justices and barons here that the judgment aforesaid should be annulled, and an entry made on the record that the said A. B. ought not, in the judgment of the said justices and barons, to have been convicted of the felony aforesaid, and you are hereby required forthwith to discharge the said A. B. from your custody.

To the gaoler of _____, and the sheriff of _____, and all others whom it may concern.

(Signed) E. F.,

Clerk of the peace for the county of _____ [or clerk of assize for _____, as the case may be].

X. Forms on Appeal to Quarter Sessions.

to wit: To _____, of _____, in the said county.

THIS is to give you [and each and every of you] notice, that I, A. B., do intend, at the next general quarter sessions, [or "quarter sessions,"] of the peace, to be holden in and for the said county of _____, at _____, in the said county, to appeal against a certain conviction of me, the said A. B., by J. P., squire, one of her Majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, on _____, &c., at _____, &c. [stating the offence:] and that the causes and grounds of such appeal are, that I am not guilty of the said offence; and that, &c., [stating any other causes of appeal the party may have:] of all which premises, you [and each and every of you] are hereby desired to take notice. Dated this _____ day of _____ &c.

Witness, C. D.

(1.) General form of notice of appeal against a conviction (a).

Be it remembered, that on the _____ day of _____, in the year _____, of our Lord _____, A. B., of _____, in the said county, (labourer,) &c., of _____, in the said county, (yeoman,) and G. H., of _____, the said county, (farmer,) personally came before me, J. P., one of her Majesty's justices of the peace for the said county, and acknowledged themselves to owe to our said Lady the Queen the sum of _____ pounds each, to be made and levied their goods and chattels, lands, and tenements, respectively, to the use of our said Lady the Queen, her heirs and successors, if default shall be made in the condition following:

(2.) General form of recognizance to try an appeal against a conviction (b).

Whereas, by a certain conviction, under the hand and seal of L. M., one of her Majesty's justices of the peace for the county aforesaid, the said A. B. is convicted, for that the said A. B., on &c., [stating the offence:] and whereas the said A. B. hath given due notice unto _____ of his intention to appeal against the said conviction, and of the causes and grounds thereof: Now the condition of

(a) For forms of notices of appeal in particular cases, see the various places throughout this work.

(b) See other forms, tit. "Recognizance," Vol. V., and the different titles throughout this work.

10. Forms.

this recognizance is such, that if the above bounden A. B. shall personally appear at the next [general quarter] sessions of the peace, to be holden at _____, in and for the said county, and shall then and there try such appeal, and abide the judgment of the said Court of [general quarter] sessions thereupon, and pay such costs as shall be by the said Court awarded, then this recognizance to be void.

Taken and acknowledged before me,

J. P.

(3.) Judgment of affirmation of the sessions on an appeal against a conviction not within 11 & 12 Vict. c. 43 (a).

At a general quarter sessions of the peace of our Sovereign Lady the Queen, held by proclamation at _____, in the county of _____, on Monday the _____ day of _____, in the _____ year of our Lord _____, before A. B., C. D., E. F., and others, their fellows, the justices of our said Lady the Queen, assigned to keep the peace of our said Lady the Queen, within the _____ aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, done and committed within the said county, and one of whom is of the quorum.

And afterwards by adjournment, (to wit,) at _____, in and for the said county, on _____ in the year aforesaid, before G. H., I. K., L. M., and others, their fellows, also the justices of our said Lady the Queen, assigned to keep the peace of our said Lady the Queen, within the county aforesaid, and also to hear and determine as aforesaid, within the said county, and one of whom is also of the quorum.

At the same court so held at _____, on the day and year aforesaid, J. W. of _____, in the county of _____ aforesaid, farmer, entered his appeal to and against a conviction, under the hand and seal of A. D. Esquire, one of her Majesty's justices of the peace for the county aforesaid, dated and made the _____ day of _____, 186____, [here state the offence as in the conviction,] and by which said conviction he the said A. D. did adjudge that the said J. W. should for the said offence forfeit the sum of two pounds, together with the sum of seventeen shillings for costs, and did order that the said sums should be paid by the said J. W. on or before the _____ day of _____ last, and that in default of payment on or before that day, he the said A. D. did by the said conviction adjudge the said J. W. to be imprisoned and kept to hard labour in the house of correction at _____, in the county of _____ aforesaid, for the space of two calendar months, unless the said sums should be sooner paid, and that the said A. D. did, in and by the said conviction, direct that the said sum of two pounds should be paid to P. S., being one of the overseers of the poor of the said parish of _____, to be by him applied according to the directions of the statute in such case made and provided; and that the sum of seventeen shillings for costs shall be paid to the said J. J., the informant, on whose information the said complaint was founded. [Let this agree with the conviction.]

Now, therefore, at the said court so holden as aforesaid by adjournment at _____ as aforesaid, upon hearing of the said appeal, it is now here ordered and adjudged by the said court that the said conviction be, and the same is hereby in all things affirmed, and it is also now here by the same court further ordered and adjudged that the said J. W. be dealt with and punished according to the said conviction, and also that he the said J. W. do and shall pay to the said J. J., the said informant and the respondent in the said appeal, the sum of £____, the amount of the costs sustained by the said J. J., and by him incurred by reason of the said appeal, and now by the said court here adjudged to be paid to him by

(a) It must appear from an order of sessions that they had jurisdiction over the subject-matter of it. (*R. v. Spackman*, 1 Gale & D. 619; see post, "Sessions.") Therefore an order of quarter sessions, on appeal against an account of overseers, is bad if it does not appear, either by express averment or necessary intendment, to relate to the annual account; for otherwise it may relate to the quarterly account, which the overseers are

directed to render by 4 & 5 Will. IV. c. 76, s. 47, and in respect of which there is no appeal to the quarter sessions. (*R. v. Spackman*, supra.) An order for costs upon an appeal against an order or conviction within 11 & 12 Vict., c. 43, must direct them to be paid to the clerk of the peace of such court, to be by him paid over. See *R. v. Binney*, *R. v. Hellier*, ante, pp. 260, 261.

the said J. W., according to the statute in such case made and provided, [See as to the power to give costs, &c., ante, 257.] 10. Forms.

The above form will apply to an appeal against a conviction or order within 11 & 12 Vict. c. 43, except that the costs must be directed to be paid to the Clerk of the Peace for the county, to be paid over by him, ante, pp. 260, 261.

Office of the clerk of the peace for the [county] of

[Title of the appeal.]

I hereby certify that, at a court of general quarter sessions of the peace, holden at , in and for the said, [county], on last past, an appeal by A. B., against a conviction [or order] of J. S., esquire, one of Her Majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county, on or before the day of instant, to be by him handed over to the said [respondent]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order. Dated the day of , 1856.

G. H., [Deputy] Clerk of the Peace.

(4.) Certificate of clerk of the peace that the costs of an appeal are not paid. (11 & 12 Vict. c. 43, sched.)

} TO the constable of , and to all other peace officers in the said
to wit. } [county] of .

Whereas [&c., as in the warrants of distress, Nos. 1, 2, given in the Schedule to that Act, see tit. "Warrant," Vol. V., to the end of the statement of the conviction or order, and then thus]: And whereas the said A. B. appealed to the court of general quarter sessions of the peace for the said county against the said conviction [or order], in which appeal the said A. B. was the appellant, and the said C. D. [or J. S., Esquire, the justice of the peace who made the said conviction or order] was the respondent, and which said appeal came on to be tried, and was heard and determined, at the last general quarter sessions of the peace for the said county holden at , on , and the said court of general quarter sessions thereupon ordered that the said conviction [or "order"] should be confirmed [or "quashed"], and that the said [appellant] should pay to the said [respondent] the sum of , for the costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said [county] on or before the day of 1856, to be by him handed over to the said C. D.; and whereas the [deputy] clerk of the peace of the said [county] hath on the day of instant, duly certified that the said sum for costs hath not then been paid (*). These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the space of days next after the making of such distress the said last-mentioned sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to , the clerk of the justices of the peace for the division of , in the said [county], that he may pay and apply the same as by law directed; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid.

J. N. (L. S.)

(5.) Warrant of distress for costs of an appeal against a conviction or order. (11 & 12 Vict. c. 43, sched.)

} TO the constable of , and to the keeper of the [house of
to wit. } correction] at , in the said [county] of .

Whereas [&c., as in last form, to the asterisk, (*) and then thus]: And whereas afterwards, on the day of , in the year aforesaid, I,

(6.) Warrant of commitment for want of distress in the last case. (11 & 12 Vict. c. 43, sched.)

10. *Forms.* *the undersigned, issued a warrant to the constable of _____, commanding him to levy the said sum of _____ for costs by distress and sale of the goods and chattels of the said A. B. : And whereas it appears to me, as well by the returns of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found : These are, therefore, to command you, the said constable of _____, to take the said A. B., and him safely to convey to the [house of correction] at _____ aforesaid, and there deliver him to the said keeper thereof, together with this precept ; and I do hereby command you, the said keeper of the said [house of correction], to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of _____, unless the said sum, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction,] amounting to the further sum of _____, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.*

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid.
J. N. (I. S.)

XI. *Forms for stating a Case under 20 & 21 Vict. c. 43.*

(1.) Application by dissatisfied party to justices for a case under s. 2.

To A. B. and C. D., Esquires, two of her Majesty's justices of the peace for the [“county”] of _____. In the matter of an information [or “complaint”] wherein I, E. F. was informant [or “prosecutor,” or “complainant,”] and G. H. was defendant, heard before and determined by you, at _____ on the day of _____.

*Being dissatisfied with your determination upon the hearing of the above information [or “complaint,”] as being erroneous in point of law, I hereby, pursuant to sect. 2 of the statute 20 & 21 Vict. c. 43, make application to you to state and sign a case setting forth the facts and grounds of such your determination, in order that I may take the opinion thereon of her Majesty's court of _____, at Westminster. Dated the _____ day of _____, A.D. 18 _____.
E. F., of _____.*

(2.) Certificate of refusal to state a case.

Whereas on the _____ day of _____, an information [or “complaint,”] preferred by A. B. against C. D. of _____ for that [“&c.,” as in the information, complaint, or summons,] was heard and determined by me [or us] the undersigned E. F. and G. H., Esquires, two of her Majesty's justices of the peace in and for the [county] of _____, at _____, and the said C. D. was before us duly convicted of the said offence, and was adjudged [or] and the said C. D. was by us ordered to pay to the said A. B. the sum of _____. [Here state the adjudication of penalty, sum, or imprisonment and costs, as in a conviction or order.]

[Or if dismissed :] and we thereupon dismissed the said information or complaint, and (if so,) ordered the said A. B. to pay to the said C. D. the sum of _____ for his costs incurred by him in his defence in that behalf, conclude as in the order of dismissal.

And whereas the said A. B. [or “C. D.”] being dissatisfied with the said determination, as being erroneous in point of law, has applied to us pursuant to sect. 2 of the statute 20 & 21 Vict. c. 43, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of her Majesty's court of [Queen's Bench] at Westminster, but we being of opinion that the application of the said A. B. [or “C. D.”] is merely frivolous, have refused to state such case, of which refusal the said A. B. [or “C. D.”] hath requested us to sign and deliver to him a certificate. Now, therefore, we, the said justices, pursuant to sect. 4 of the same statute, do hereby certify that we are of opinion that the application of the said A. B. [or “C. D.”] as aforesaid is merely frivolous, and that we have refused to state a case accordingly for the opinion of the said court of [Queen's Bench].

Given under our hands, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid.
E. F., G. H.

11. *Forms.**In the [Queen's Bench].**Between A. B. Appellant,**and**C. D. Respondent.*

This is a case stated by us, the undersigned, two of her Majesty's justices of the peace in and for the [county] of , under the statute 20 & 21 Vict. c. 43, for the purpose of obtaining the opinion of the court on questions of law which arose before us as hereinafter stated.

At a petty sessions holden at [in and for the division of ,] in the [county] of , on the day of , an information [or "a complaint,"] preferred by C. D. (hereinafter called the "respondent,") against A. B. (hereinafter called the "appellant,") [or as the case may be,] under section of the act , charging, that he the said [&c., stating the offence or cause of complaint,] was heard and determined by us, the said parties respectively being then present; and upon such hearing the appellant was duly convicted before us of the said offence, and we adjudged him [or "and upon such hearing the appellant was by us ordered to pay to the respondent the sum of ."] [Here state the adjudication of penalty, sum, or imprisonment and costs as in a conviction.]

[Or if dismissed:] state the order of dismissal.

And whereas the appellant being dissatisfied with our determination upon the hearing of the said information [or "complaint,"] as being erroneous in point of law, hath, pursuant to sect. 2 of the said statute 20 & 21 Vict. c. 43, duly applied to us in writing to state and sign a case setting forth the facts and the grounds of such our determination as aforesaid, for the opinion of this court, and hath duly entered into a recognizance as required by the said statute in that behalf.

[If the case is stated in obedience to a rule under sect. 5, recite the refusal and the granting of such rule as follows:] but we, being of opinion that the application of the appellant was merely frivolous, refused to state and sign such case, and at his request signed and delivered to him a certificate of such refusal. And whereas her Majesty's Court of Queen's Bench at Westminster have since granted a rule calling upon us to state such a case.

Now, therefore, we, the said justices, in compliance with the said application [or "in obedience to the said rule and order of the said Court of Queen's Bench,"] and the provisions of the said statute, do hereby state and sign the following case. [Here state the proceedings before the justices.]

The questions of law arising on the above statement for the opinion of this court, therefore, are,—1st, whether, &c.; 2nd, whether, &c.

If the court shall be of opinion that the said conviction [or "order,"] was legally and properly made, and the appellant is liable as aforesaid [and is], then the said conviction [or "order,"] is to stand; but if the court should be of opinion otherwise, then the said complaint is to be dismissed.

Or [whether the said is valid or otherwise, and the court is humbly solicited according to the power vested in the court by the said statute, 20 & 21 Vict. c. 43, to remit the case to us the said justices with the opinion of the court thereon, or to make such other order as to the court may seem fit.]

Given under our hands, this day of , in the year of our Lord, at , in the [county] aforesaid.

J. L., J. L.

[Proceed as in the usual form of Recognizance, (see tit. "Recognizance,") the condition indorsed being as follows:]

The condition of the within written recognizance is such, that whereas [&c., as in the form of justices' certificate, ante, p. 276, which the said justices intend to comply with if then known to be so]. If, therefore, the said A. B. [or "C. D."] after the said justices shall have stated a case setting forth the facts and the grounds thereof as aforesaid, for the opinion of the said court, shall duly prosecute without delay such his appeal, and submit to the judgment of the said court thereon, and pay such costs as may be awarded by the same.

[If appellant in custody, add here:] and further, should the said appeal be dismissed, that if the said A. B. or C. D. shall appear before such justice or

(3.) Case stated by justices.

(4.) Recognizance to prosecute appeal.

11. *Forms.* justices of the peace for the said [county] of _____ as shall be sitting at the _____
 at _____, on some [Friday] within ten days after the judgment
 of the said court shall have been given to abide such judgment.
 Then the said recognizance to be void, or else to stand in full force and virtue.

(5.) Notice from
 appellant to
 respondent, with
 copy of case
 stated.

To C. D. [or "A. B.,"] of &c.
 Take notice that I, the undersigned A. B. [or "C. D.,"] being the defendant
 [or "informant," or "prosecutor," or "complainant,"] in an information [or
 "complaint,"] preferred by you [or "myself,"] and heard before and determined
 by two of her Majesty's justices of the peace in and for the [county] of _____,
 at _____, on the _____ day of _____ instant, being dissatisfied with
 the determination of the said justices upon the hearing of the said information [or
 "complaint,"] as being erroneous in point of law, applied to the said justices,
 pursuant to sect. 2 of the statute 20 & 21 Vict. c. 43, to state and sign a case
 setting forth the facts and the grounds of such their determination, in order that I
 may take the opinion thereon of her Majesty's court of _____, at Westminster.
 And further take notice, that in pursuance thereof and of the provisions of the
 statute aforesaid, the said justices have stated and signed a case, a copy of which
 is annexed hereto.

Dated the _____ day of _____, 186 ____.
 A. B. [or "C. D."] of _____.

Appearance.

On indictments
 for felony.

Proceedings to
 compel appear-
 ance after
 indictment
 found.

IT is a rule that no one can be tried on an indictment for a felony unless he appear in person. Also, in criminal cases, where an act of parliament requires it, and on an attachment, the defendant must, in general, appear in person. (2 Hawk. P. C. c. 22, s. 1.)

By 11 & 12 Vict. c. 42, s. 3, "Where any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions at which the said indictment shall be found, shall, at any time afterwards, after the end of the sessions of oyer and terminer, or gaol delivery, or sessions of the peace, at which such indictment shall have been found, upon application of the prosecutor, or of any person in his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough, or place in which the offence shall, in such indictment, be alleged to have been committed, or in which the person indicted in and by such indictment shall reside, or be, or be supposed or suspected to reside or be, it shall be lawful for such justices to issue his or their warrant to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices, upon its being proved upon oath or affirmation before him or them, that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit

him for trial, or admit him to bail in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices, and he and they are hereby required, upon it being proved before him or them upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant directed to the gaoler or keeper of the gaol, or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until, by her Majesty's writ of *habeas corpus*, he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law."

Sect. 4. "That it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid, or any search warrant, on a Sunday as well as on any other day."

Any court before which an indictment is found may forthwith issue a bench warrant for arresting the party charged, and bringing him immediately before such court to answer such indictment. (8 *Rep. Com. Law* 99; see further tit. "*Process*," Vol. II.)

Appearance.

The bench warrant is granted while the court is sitting. (2 *Hawk. c. 27 s. 8*.)

Bench warrant.

If issued during assizes, it is signed by the judge; if at sessions, by two justices of the peace, *ibid.* (See form of bench warrant, *post*, tit. "*Warrant*.")

If the defendant, against whom an indictment has been found, happen to be present in court, or in the custody of the court, he may at once be arraigned upon the indictment without any previous process. (2 *Hawk. c. 27*.)

As to proceedings to compel appearance before justices in preliminary proceedings in indictable offences, see *post*, tit. "*Warrant*," Vol. V.

On an indictment or information for a crime *less than felony*, the defendant may, by favour of the court, appear by attorney, and this he may do as well before plea pleaded as afterwards, until conviction. (*Bacon's case*, 1 *Lev.* 146; *Keilw.* 165.)

On indictments for misdemeanours.

And in case of mayhem, even though it is stated to be done *feloniously* in the indictment, the defendant need not personally attend, but may cause his plea to be delivered in the office; (*R. v. Haddock*, 2 *Stra.* 1101; *R. v. Hales*, *id.* 816;) and a clerk in court may confess an indictment for his client in his absence. (*Anon.* 6 *Mod.* 16.)

Where infants are prosecuted for misdemeanours, it is the constant practice for them to appear by attorney in the crown office, though in civil cases they must defend by guardian. (*Reg. v. Tanner*, 2 *Ld. Raym.* 1284.)

Infants.

In order to reverse an outlawry before conviction on an indictment for a misdemeanour, the defendant may appear by attorney, though he cannot do so on a prosecution for a felony; (*Com. Dig. Attorney*, (B. 6); 4 *W. & M. c.* 18;) or when he is taken for a contempt, or on a *cepi corpus* upon an exigent. (*Id.*)

In outlawry.

By the 48 Geo. III. c. 58, s. 1, if a person in custody under a warrant or writ of *capias*, founded on an indictment in the Court of Queen's Bench, (which can only be for a misdemeanour,) shall not cause an appearance and plea or demurrer to be entered for himself within eight days after copy of the indictment delivered with notice to plead in eight days, it shall be lawful for the prosecutor to cause an appearance and plea of not guilty to be entered for him, and to proceed to trial as if he were actually present.

Where prosecutor may enter appearance for defendant.

An information for penalties under the game law is not an information within the stat. 48 Geo. III. c. 58; and therefore where the prose-

What information for penalties not within the Act.

Appearance.

cutor had entered an appearance and a plea of not guilty for the defendant, the court set aside such verdict for irregularity; *et per Abbot, C. J.*, "It is quite clear that the statute does not apply to an information brought for penalties on the game laws. It enacts, 'that when any person shall be charged with an offence for which he may be prosecuted by indictment or information in his Majesty's Court of K.B.' It therefore contemplates offences over which this court has exclusive jurisdiction, by indictment or information. Now, penalties under the game laws may be recovered by information not only in this court but in the other courts in *Westminster Hall*. I think the statute applies only to such offences as the Court of King's Bench may exclusively entertain when prosecuted by indictment or information at the suit of the king." (*Davies v. Bint*, 3 B. & Cres. 586; 5 D. & R. 353, S. C.)

On information.

As to the necessity for defendant's appearance in order to convict him on an information before a magistrate, see *post*, "*Conviction*."

On appeal.
Certiorari.

As to the necessity for the appellant and respondent's appearance on an appeal, see *ante*, p. 240; see also *post*, "*Certiorari*."

Judgment.

As to appearance on judgment, see *post*, "*Judgment*," Vol. III.

Right of attorney
to be present.

As to the right of an attorney or counsel to be present on summary proceedings before magistrates, see *post*, "*Conviction*."

As to the effect of appearance as a waiver of the necessity of summons or of defects in preliminary proceedings, see *post*, tit. "*Conviction*," "*Bastardy*."

Forms.

Forms of the certificate and warrants mentioned above are given in the schedule to 11 & 12 Vict. c. 42.

Approver.

Who is, &c.

AN Approver (*probator*) is a person indicted of treason or felony, and in prison for the same, who upon his arraignment, before any plea pleaded, doth confess the indictment, and takes a corporal oath to reveal all treasons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accusation against those that are partners in the crime contained in the indictment. (3 *Inst.* 129; 4 *Bl. Com.* 330; 3 *Russ. on Crimes*, 4th ed. 597.)

This accusation of himself and oath makes his accusation of another person of the same crime to amount to an indictment; and if his partners are convicted, he shall have his pardon of course. (3 *Inst.* 129, 130.)

But justices of the peace cannot take cognizance hereof, because they have no authority by their commission to assign a coroner. (*Id.* 130.)

Practice as to,
obsolete.

And besides, as it is in the discretion of the court whether they will suffer one to be an approver, this method of late hath been seldom practised. (2 *Hale*, 226.)

Should not be
admitted to bail.

It is the duty of magistrates, in all cases, to commit an accomplice, and not to admit him to bail, notwithstanding it may be intended to call the accomplice as a witness on the trial. (*Rex v. Beardmore*, 7 *Car. & P.* 497.)

The practice of the London police-officers is in conformity to this principle, for it is not their custom to release an accomplice who proposes to give evidence as a witness against his associates, but to commit him for the felony, in which case, upon his fully disclosing the facts upon the trial, he will probably receive his pardon; in order, however, to avoid collusion in the testimony between the parties suspected, the accomplice is usually committed to the house of correction, and the others to the county prison. (See 1 *Chit. C. L.* 83; *Rudd's case*, 1 *Leach*, 120; 1 *Cowp.* 336.)

The engagement of a magistrate to an accomplice, that if he will give his evidence he will experience favour, is merely in the nature of a recommendation to mercy, for no authority is given to a justice of the peace to pardon an offender, and to tell him that he shall be a witness against others. He is not therefore assured of his pardon, but gives his evidence in custody, and it depends upon his behaviour whether he shall or shall not be admitted to mercy. A justice has no authority to select whom he pleases to pardon or to prosecute; and a prosecutor himself has even less power or rather pretence to select than a justice of the peace. It is merely an equitable claim to the mercy of the Crown, from the magistrate's express or implied promise of an indemnity upon certain conditions of a most candid disclosure.

An accomplice admitted as king's evidence, and performing the condition on which he is admitted as a witness, is not entitled, as matter of right, to be exempt from prosecution for other offences with which he is charged, but it will be matter in the discretion of the judge whether he will recommend him for a pardon or not. (*R. v. Lee, R. & R.* 361; *R. v. Brunton, R. & R.* 454; *R. v. Duce*, 1 *Burn's Just. by Chetwynd*, 212.) So the promise of a pardon by proclamation in the *Gazette* does not give a party convicted a legal right to arrest the judgment and stay the execution. (*R. v. Garside*, 2 *A. & E.* 266.) The proper course in such a case would seem to be to apply to the judge to postpone execution in order that an application may be made to the secretary of state for a pardon as promised. (*Russ. on Crimes*, ed. *Greaves*, 4 ed., Vol. III., 597, n.) But the judges will not, in general, admit an accomplice as king's evidence, although applied to for that purpose by the counsel for the prosecution, if it appear that he is charged with any other felony than that on the trial of which he is to be a witness, (2 *C. & P.* 411.)

It is not a rule of law that an accomplice must be corroborated in order to render a conviction valid; and it is the duty of the judge to tell the jury that they may, if they please, act on the unconfirmed testimony of an accomplice. It is a rule of practice, and that only, and it is usual in practice for the judge to advise the jury not to convict on the testimony of an accomplice alone, and juries generally attend to the direction of the judge, and require confirmation. (*Reg. v. Stubbs*, 1 *Dears. C. C.* 555; 25 *L. J. M. C.* 16; *R. v. Hastings*, 7 *C. & P.* 152.)

There has been a difference of opinion as to what corroboration is requisite, but *Parke, B.*, in *Reg. v. Stubbs*, said that his practice had always been to direct the jury not to convict unless the evidence of the accomplice be confirmed, not only as to the circumstances of the crime, but also as to the identity of the prisoner. An accomplice necessarily knows all the facts of the case, and his story, when the question of identity is raised, does not receive any support from its consistency with those facts, and has therefore no tendency to show that any particular person who may be accused was there. In *Reg. v. Stubbs* (*ubi sup.*), *Stubbs* was indicted with three others for stealing copper: three accomplices swore to copper having been taken on three occasions, and that *Stubbs* was one of the persons present on the last occasion only, and that he assisted to carry it away and sell it, and shared in the money produced by the sale. There was no corroboration of these facts as to *Stubbs*, but there was as to the other three prisoners. The jury convicted. And on a case reserved, *Jervis, C. J.*, said, "Where an accomplice speaks as to the guilt of three prisoners, and is confirmed as to two of them only, the jury may, no doubt, if they please, act on the evidence of the accomplice alone as to the third prisoner, but it is proper for the judge in such a case to advise the jury that it is safer to require confirmation of the testimony of the accomplice as to the third prisoner, and not to act on his evidence alone, for nothing is so easy as for the accomplice, speaking truly as to all the other facts of the case, to put the third man in his own place; but a jury may, if they choose,

Approver.

 Accomplice's evidence.

Practice as to corroborative testimony.

Approver.

act on the unconfirmed testimony of an accomplice; in this case they have acted on the evidence before them, and we cannot interfere."

There is no doubt, however, that the practice as to requiring confirmation of the evidence of the accomplice as to all the prisoners has not been uniform, and though in some cases it had been held that if there be confirmation of the accomplice as to one of the prisoners, the jury may convict as to all. (*R. v. Dawber*, 3 *Stark. N. P.* 34; *R. v. Jones*, 2 *Camp.* 131; *R. v. Birkett*, *R. & R.* 252.) See as to other cases where that rule has not been acted upon. (*R. v. Webb*, 6 *C. & P.* 595; *R. v. Wilkes*, 7 *C. & P.* 272; *R. v. Dyke*, 8 *C. & P.* 261; *R. v. Farler*, 8 *C. & P.* 108; *R. v. Wells*, *M. & M.* 326; *R. v. Moore*, 7 *C. & P.* 270.)

The confirmation by the wife of an accomplice in a case of felony is really no confirmation at all, and the jury ought not to place any reliance upon it. (*R. v. Neal*, 7 *C. & P.* 168.)

Persons present, aiding, and assisting at a prize fight are not accomplices within the rule which requires confirmation of their testimony. (*R. v. Hargrave*, 5 *C. & P.* 170.) Nor where the prisoner, an accessory, employed another person to harbour the principal felon, was the person who harboured the principal an accomplice within the rule. (*R. v. Jarvis*, 2 *M. & R.* 40.) Nor was a person who joined a conspiracy simply as a spy. (*Reg. v. Mullins*, 3 *Cox C. C.* 526.)

Where two were indicted for housebreaking, and one pleaded guilty, he was permitted to give evidence to show that the other was not present when the offence was committed. (*Reg. v. George*, *Car. & M.* 111; *Reg. v. Jackson*, 6 *Cox C. C.* 525.)

Arraignment.

What.

ARRAIGNMENT is the calling the defendant to the bar of the court to answer the matter charged in the indictment. (2 *Hale*, 216.) It consists of three parts: 1st, calling the prisoner to the bar by name; 2ndly, stating to him the substance of the indictment, or, if required, reading it to him; 3rdly, asking him whether he be guilty or not. (2 *Hale*, 219.)

To plead in person, when.

In felonies the defendant must be present in person to plead and stand his trial, and it should so appear on the record; (1 *Show.* 131;) but in misdemeanours, after plea pleaded, he may sometimes appear on his trial by attorney; (2 *Hale*, 216;) and where the punishment is a fine, he may confess by clerk in court. (*Anon.*, 6 *Mod. Rep.* 16; *Com. Dig.* "Indictment" (K).)

On his arraignment, the prisoner, though under an indictment for the highest crime, must be allowed to stand at the bar free from all irons or bonds unless there be any danger of escape, or perhaps of his committing any act of violence, and then he may be put in irons, if necessary. (*The Mirror*, c. 5, s. 1, (54); *Britton*, c. 5, fo. 14; 3 *Inst.* 34; 2 *Hawk.* c. 28, s. 1; 2 *Hale*, 219.)

As now the prisoner is never brought up in fetters, the distinction taken in *Layer's case*, (6 *St. Tr.* 230,) on this point, with respect to the time of arraignment and the time of trial, where it is stated that the prisoner is not entitled to be freed from irons till after he has pleaded, does not now appear to be of importance, even if it ever could have been supported. (See 2 *Hale*, 219.)

The prisoner must in some manner signify that he is the person referred to in the indictment, but whether he do so by answering to his name by holding up his hand or otherwise is immaterial. (2 *Hawk.* c. 28, s. 2; *R. v. Radcliffe*, 1 *Bla. Rep.* 3; *Fost.* 40; *Lord Stafford's Case*, 1 *Raym.* 408.)

A peeress, when about to be tried by her peers, may be arraigned kneeling, and rise after joining issue. (1 *Leach*, 156). Arraignment.

The charge in the indictment should then be stated to the prisoner, and care be taken that he distinctly understands it. Mode of stating subject of indictment.

The mode in which the charge in the indictment is stated to the prisoner is, "You, A. B., stand indicted for that you, on, &c.," and then the effect of the indictment is stated, or the indictment read.

After the indictment is read, or its effect stated, as the case may be, the clerk of the arraigns or officer of the court, says, "How say you, A. B., are you guilty or not guilty." (2 *Hale*, 219; *R. v. Hensey*, 1 *Burr.* 643; *Dalt.* c. 185.) If the prisoner pleads guilty, the confession is recorded, and sentence is then passed, or he stands aside till he be brought up for judgment. (*Dalt.* c. 185; 4 *Harg. St. Tr.* 779; *Cro. C. C.* 7.)

If, on arraignment, the prisoner has pleaded under a mistake, either as to the effect of his plea or the effect of the indictment, the judge, in his discretion, will allow him to withdraw his plea and plead afresh. A prisoner, after having pleaded not guilty to a forgery has been allowed to withdraw his plea and plead guilty; and again, upon being called as a witness against an accomplice, and swearing that his plea of guilty was pleaded by mistake, to withdraw his second plea, and again plead not guilty, and be tried upon it. (*Reg. v. Clouter and Heath*, 8 *Cox C. C.* 237.) But the permission to withdraw a plea is a matter in the discretion of the judge at the trial, and has been refused to a prisoner who had pleaded not guilty when the application to withdraw the plea was made with a view to demurring to a portion of the indictment. (*Reg. v. Brown*, 1 *Den. C. C.* 291; 17 *L. J. M. C.* 145.) Withdrawing plea.

If, after arraignment, the prisoner, by consent, withdraw his plea of not guilty and plead to the jurisdiction, he may afterwards be again arraigned upon the same indictment, and the former arraignment is no answer. (*Post.* 16-23; 1 *Wils.* 157; *Withipole's Case*, *Cro. Car.* 147.) If before the plea is withdrawn the prisoner has been given in charge to the jury, the proper course is to withdraw a juror and have the jury discharged, as in *Kinloch's case*, *Post.* 16.

And the prisoner is entitled to have the indictment slowly read to him when he requires it, whether for the purpose of pleading *auterfois acquit*, or convict, or other special plea, or not. Reading the indictment.

It is a constant practice for the courts in all cases, where the prisoner's counsel deems it material for the defence, as a favour, to allow him a copy of the indictment, or of such parts as it may be necessary for him to examine. (*Archb. Cr. Pl. by Welsby*, 15 ed., p. 129.) And in cases of treason, the statute 7 Will. III., c. 3, gives it as a right, but the indictment should be read, or its substance stated, on the arraignment, although the defendant has had a copy given to him. (*R. v. Hensey*, 1 *Burr.* 643.)

If the defendant pleads not guilty, the clerk of the arraigns writes on the indictment *Po. se*, for *ponit se*; in short, for *ponit se super patriam*, and in the minutes of the trial the word "puts." (*R. v. Newman*, 2 *Den. C. C.* 392; 21 *L. J. M. C.* 75.) This concludes the form of the arraignment. See, as to this practise at O. B., *Reg. v. Newman*, *ubi sup.*

By 7 & 8 Geo. IV. c. 28, s. 1, If any person, not having privilege of peerage, being arraigned on any indictment for treason, felony, or piracy, shall plead thereto a plea of not guilty, he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly. Effect of plea of not guilty.

When the prisoner is deaf and dumb, or is compelled to be mute through either affliction, he may, if he understand the use of signs, be arraigned, and the meaning of the clerk be conveyed to him by signs through an interpreter, sworn to interpret truly, and his signs in reply explained to the court, so as to justify the recording of a plea of Arraignment by signs.

Arraignment. guilty or not guilty, and, in the latter case, proceed with his trial, and to the infliction of legal penalties. (*R. v. Jones*, 1 *Leach*, 102.) By 7 & 8 Geo. IV. c. 28, s. 2, if the prisoner stand mute of malice, or will not answer directly to an indictment or information for treason, felony, piracy, or misdemeanour, the court may order the proper officer to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Where prisoner deaf and dumb. If the prisoner be mute by the visitation of God, as if dumb, or deaf and dumb, and all means to convey intelligence by signs or otherwise, to the mind of such prisoner, respecting the nature of the arraignment, prove of no effect, the proper course is for a plea of not guilty to be entered, and the case to be proved. (*Sheel's case*, 1 *Leach*, 452.)

How to try where the prisoner be mute of malice, or visitation of God. The proper way to determine whether the prisoner be mute by the visitation of God or malice, is by the verdict of a jury sworn to try that question, because of the great fraud there may be in that matter. (*R. v. Pritchard*, 7 C. & P. 303.) If the jury find the prisoner mute by the visitation of God, then they are sworn to determine whether the prisoner is able to plead to the indictment (*ibid*). If they find he is not, then a plea of not guilty should be entered. (1 *Leach*, 452.) If they find him able to plead, then the prisoner pleads by signs, &c. The jury are then sworn to determine whether he has sufficient intellect to comprehend the course of proceeding at the trial. (*Reg. v. Pritchard*, *ubi supra*.) *Sed qu.*, whether, if he plead not guilty, the trial may not proceed, the court watching the proceedings on behalf of the prisoner.

Insanity at time of arraignment. If, when the prisoner is brought up to plead, he is insane, he ought not to be arraigned, and this, whether the prisoner, before his arraignment, and before his madness came on, has confessed to the crime or not; and however apparent to the court the insanity of the prisoner may be, it would seem to be the proper course to empanel and swear a jury to enquire whether such apparent insanity be real or counterfeit. (1 *Hale P. C.* 34.) This course was followed in *The Queen v. Goode*, (7 A. & E. 536,) and the jury found the fact of the prisoner's insanity at the time of the trial without any other evidence than the prisoner's demeanour in court; but it is to be observed that that appears to have been done to justify the prisoner's detention in custody under the 40 Geo. III. c. 94, s. 2. That section enacts, that "if any person, indicted for any offence, shall be insane, and shall, upon arraignment, be found so to be by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment; or if upon the trial of any person so indicted such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until her Majesty's pleasure shall be known." The latter part of the section meets the case of an insane prisoner who has by an oversight been allowed to plead. Under such circumstances, the judge, in his discretion, might discharge the jury from determining the issue before them, though the empannelling a jury to try the question of insanity was adopted as a matter of prudence. (1 *Hale*, 34.)

If the prisoner, though sane at the time of arraignment and trial, was mad at the time of the commission of the offence, his case is provided for by the 1st section of the 39 & 40 Geo. III. c. 94, extended to misdemeanours by the 3 & 4 Vict. c. 54, s. 3. (See "*Insanity*," Vol. IV.; "*Lunatics*," Vol. III.)

As to the mode of arraignment, where a previous conviction is charged in a count in the indictment, it is now provided by the 24 & 25 Vict. c. 96, s. 116, "That the offender shall in the first instance be arraigned upon so much only of the indictment as charges the subse-

Mode of arraignment where previous conviction charged.

quent offence, and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then and not before be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted, the court may proceed to sentence him accordingly; but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to enquire concerning such previous conviction, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned enquiry." Before this statute the prisoner was arraigned as well on the counts charging the previous conviction as the principal offence, though the jury were not charged to enquire concerning the previous conviction till after they had brought in their verdict as to the principal offence.

The course of proceeding above stated is to be adopted, whether the previous conviction is stated at the beginning or at the end of the indictment. (*Queen v. Hilton*, *Bell C. C.* 20; 28 *L. J. M. C.* 28.)

The above statute expressly declares that it shall not be necessary to swear the jury a second time, but it had been so held upon the prior statute on the subject, which contained no express provision to that effect. (*Queen v. Shuttleworth*, *Temp. & Mew*, 626; *Queen v. Key*, *id.* 623.)

Though the early part of s. 116 of 24 & 25 Vict. c. 96, is confined to offences punishable under that Act, the words become general when the mode of arraignment is prescribed, and it has therefore been said that it applies equally to indictments for any other offences than those under that Act; as, for instance, to malicious injuries to property against the 24 & 25 Vict. c. 97, ss. 22 or 23; but it is to be observed that the Act relating to coinage offences has a clause of its own on the subject.

The practice above prescribed has been applied also to cases where the previous conviction forms part of the offence itself, and proof of it is necessary to give the court jurisdiction over the principal offence; as, for example, in such cases as damaging trees after two previous convictions for that offence, which is a misdemeanour under the 24 & 25 Vict. c. 97, s. 22. See also the 23rd section of the same Act.

The 24 & 25 Vict. c. 99, s. 37, relating to the coinage, is identical in its language with the 24 & 25 Vict. c. 96, s. 116, so far as it relates to this subject.

If there be two charges against the same prisoner for the same thing, as if one be upon a coroner's inquisition, and the other upon indictment found by the grand jury, the fairest course is to give him in charge to the jury upon both charges at once, (*Queen v. Culliford*, 1 *Salk.* 382; *Com. Dig. Indict. (M.)*; 2 *Hale*, 228; 1 *East*, *P. C.* 371,) and to indorse the acquittal or conviction upon both; for if he be arraigned upon one only and acquitted, he must be tried upon the other, and be put to plead his former acquittal; (*Id.*) and if a conviction take place on the one, and the other is proceeded on, a *cesset processus* ought to be entered, or a verdict of acquittal taken, for otherwise the prisoner might be outlawed upon it. (2 *Hale*, 221; 1 *Chitt. Cr. Pl.* 418.)

Where there are several defendants charged by the same indictment, they should be all arraigned together, and the trial proceeded with as to one or more, as shall be found most convenient for the purposes of justice. (*Kel. 8.*)

As to the arraignment of accessaries, see tit. "Accessary," ante, p. 33.

If a want or omission of the arraignment appears on the record, it will be sufficient ground for reversing the judgment and conviction. (2 *Hale*, 218; *Anon.* 3; *Mod.* 265; 1 *Chitt. Cr. Pl.* 418.)

Arraignment.

Larceny Act.

Where previous conviction part of the offence.

Where prisoner charged on coroner's inquisition as well as indictment.

Arraignment.

Entry or description of the arraignment on the record.

AND afterwards, to wit, at the same delivery of the gaol of the said Lady the Queen of her county aforesaid, on the said Friday, the 6th day of August, in the said second year of the reign of the said Lady the Queen, before the said justices of the Lady the Queen last above named, and others their fellows aforesaid, here cometh the said P. H. under the custody of the said W. B. Esquire, sheriff of the county aforesaid (in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he had been before committed), being brought to the bar here in his proper person by the said sheriff, to whom he is here also committed. And forthwith, being demanded concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he saith that he is not guilty thereof, and thereof for good and evil he puts himself upon the country. And J. B. Esquire, clerk of the assize for the county aforesaid, who prosecutes for the said Lady the Queen in her behalf, doth the like. Therefore, &c.

Arrest without Warrant.

THIS title is to be understood of arrests in *criminal* cases only, and not in civil cases; also to arrests without warrant. As to arrests under a warrant, see "*Warrant*," Vol. V.

What an arrest.

In law, an arrest doth signify the restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law; and it may be called the beginning of imprisonment. (*Lamb.* 95.)

Concerning arrest in *criminal* cases, it will be shown—

- I. *Who may or may not be arrested*, 286.
- II. *For what an Arrest may be made*, 287.
 1. *Where Party found actually committing an Offence*, 287.
 2. *On Suspicion of having committed an offence*, 291.
- III. *By whom arrest may be made*, 293.
 1. *By Justices of the Peace*, 293.
 2. *By Sheriffs and Coroners*, 294.
 3. *By Constables*, 295.
 4. *By Watchmen, Beadles, &c.*, 298.
 5. *By Private Persons*, 298.
- IV. *Time and Place of*, 301.
- V. *Manner of*, 302.
- VI. *What is to be done after*, 304.

As to obstructing an arrest, see *post*, "*Assault in Aggravated Cases*."

As to rewards for apprehending offenders, see *post*, "*Rewards*," Vol. V. *See Warrant of apprehension.*

I. Who may or may not be Arrested.

Who liable to.

All persons are in general liable to an arrest when accused of criminal offences. (4 *Steph. Com.* 3 ed. 395.)

Peers.

Generally, a peer or member of parliament shall have the privilege of

peerage and parliament for himself and his servants to be freed from arrests; but for treason, felony, and breach of the peace, there can be no privilege. (4 *Inst.* 24, 25; 1 *Bl. Com.* 145; 11 *Harg. St. Tr.* 305; *Fort.* 359.)

Bodies corporate, acting in a way that would render an individual liable to arrest, cease to retain, of course, their corporate character, and become individually responsible.

A married woman may be arrested on a criminal charge, the same as if she were a *feme sole*. (*R. v. Taylor*, 3 *Burr.* 1681; 1 *Hawk. c.* 1.)

2. *For what may be made.*

Members of parliament.

Bodies corporate.

Feme covert.

II. For what an Arrest may be made.

And herein of an arrest,—1st. Where a party is found actually committing an offence; and 2nd. Where he is merely suspected of having committed an offence.

(1.) WHERE PARTY FOUND ACTUALLY COMMITTING AN OFFENCE.

By the Common Law.—By the common law any person may do any thing reasonably necessary to prevent the perpetration of a felony upon the point of being committed, and he may detain the offender until it may be fairly presumed he has changed his purpose. (*Year Book*, 9 *Edw. IV.* fos. 26-36; 2 *Hawk. c.* 12, s. 19; 1 *Hale*, 589; 2 *Roll. Abr.* 559; *Com. Dig. Pleader*, 3 *M.* 22; *R. v. Hunt*, 1 *Moo. C. C.* 93.)

At common law.

In a case where the defendants broke and entered the plaintiff's house to prevent him from murdering his wife, the Court of Common Pleas held that they were justified. (*Per Chambre, J., Handcock v. Baker and others*, 2 *B. & P.* 260; 13 *Edw. IV.* fol. 9, pl. 4.)

Any person may apprehend a thief in the mainour—that is, with stolen goods actually in his possession or the like. (1 *Show.* 24.)

Any person may without warrant apprehend and carry before a magistrate a party about to expose an infant and leave it to perish; (2 *Hawk. c.* 12, s. 19; *Com. Dig. Pleader*, 3 *M.* 22;) or a party playing with false dice, or other indictable fraud affecting the public. (*Sir W. Jones*, 249; *Com. Dig. Pleader*, 3 *M.* 22; *Hollyday v. Oxenbridge*, *Cro. Car.* 324; 2 *Roll. Abr. tit. "Trespass," C. Pl.* 2, p. 546.)

If a man be found committing a felony in the night, any one may apprehend and detain him until he can be carried before a magistrate. (*R. v. Hunt*, 1 *Moo. C. C.* 93.)

It seems also that a man may be arrested on fresh pursuit without warrant when found committing a felony, or breach of the peace, though before his arrest he escaped to some distance and hid himself, and tried to escape when discovered, and has given over his intention to commit the felony, or breach of the peace, if it can be deemed one transaction; (see *R. v. Howarth*, *Moo. C. C.* 207; *post*, 288; *sed vide* 2 *Hawk. c.* 12; 1 *East's P. C. c.* 5, s. 72; *R. v. Dyson*, 1 *Stark.* 246;) but if the arrest be not made on fresh pursuit a warrant is necessary. (*R. v. Gardner*, 1 *Moo. C. C.* 390; *Reg. v. Walker*, *Dears. C. C.* 358; 23 *L. J. M. C.* 123; *Reg. v. Marsden*, 37 *L. J. M. C.* 80.)

Where an affray or breach of the peace has begun, any bystander may and ought to interfere, not only to part those who are making the affray, but to stay those who are going to join in it, and may arrest and detain them until the heat be over, and then deliver them to a constable, though the constable has seen no part of the affray, who may carry them before a justice of the peace; (*Timothy v. Simpson*, 1 *C. M. & R.* 757;) and if a person has reasonable ground to believe that a breach of the peace which has been recently committed in his view is about to be renewed, he may arrest and detain the intending affrayers; (*Price v. Seeley*, 10 *Ch. & Fin.* 28; *Reg. v. Light*, *D. & B.* 332; 27 *L. J.*

2. For what may be made. *M. C. 1;* and for the purpose of interposition, in their own view, the power of peace officers appears not to differ from that of any of the king's other subjects; but no private person can apprehend another for a bare breach of the peace after it is over, and when there is no probability of its being renewed without a warrant. (*Timothy v. Simpson, ubi sup.*; *Reg. v. Walker, ubi sup.*; 2 *Inst.* 52; 2 *Hawk. c. 12, s. 20*; 1 *East's P. C.* 300; *Bac. Ab. Trespass* (3 D.); *R. v. Dyson*, 1 *Stark.* 246; see tit. "*Affray*," ante, p. 57.) And no person can in general be apprehended without warrant for a mere misdemeanour not attended with a breach of the peace, as perjury or libel. (*Matthews v. Biddulph*, 4 *Scott N. R.* 54; *R. v. Wilkes*, 2 *Wils.* 159; 2 *Salk.* 698; *Fortes.* 140.)

Before a person interferes to prevent others from fighting, he should first notify his intention to prevent a breach of the peace. (2 *Hawk. c. 12, s. 19*; 1 *Hale*, 589; *R. v. Rickets*, 3 *Campb.* 68.)

But it seems that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told why, and the arrest will be legal and the resistance illegal as much as if he had been told. (*R. v. Howarth, Moo. C. C.* 207.)

A party cannot be imprisoned for a mere trespass for which an indictment will not lie. (See *Green v. Bartram*, 4 *C. & P.* 308; *R. v. Storr*, 3 *Burr.* 1701, 1703, 1707; *R. v. Wilson*, 8 *T. R.* 357; and see *Williams v. Glenister*, 6 *B. & C.* 699; *post*, 304.)

Bankrupt. *Under the Bankruptcy Act, 24 & 25 Vict. c. 134, s. 228.*—See *Post*, "*Bankrupt*."

Church. *In churches, &c.*—Any person making a disturbance in a church, chapel, churchyard, or burial-ground, may be apprehended immediately after the commission of the offence, and taken by any churchwarden or constable before a justice of the peace. (23 & 24 *Vict. c. 32, s. 3*.)

Coinage. *Coinage offences.*—Under the consolidated statute against offences relating to the coin, any person whatsoever may apprehend any person who shall be found committing any indictable offence, or any high crime and offence, or crime and offence against that Act, and to convey and deliver him to a constable, &c. (24 & 25 *Vict. c. 99, s. 31*.) See *post*, tit. "*Coin*."

County court. *County Court.*—A person assaulting a county court officer, or rescuing a distress made under the process of the county court, may be taken into custody without a warrant by a bailiff of the court or a peace officer. (9 & 10 *Vict. c. 95, s. 114*.)

Cruelty. *Cruelty to Animals.*—When any offence has been committed against the 11 & 12 *Vict. c. 92*, any constable, upon his own view thereof, or upon the complaint or information of any other person, who shall declare his or her name and place of abode to the said constable, may seize and secure such offender without any warrant. (Sect. 13.)

Poaching. *Game.*—Any person found upon any land committing the offence of night poaching may be apprehended on the same land, or in case of pursuit made in any other place, by the lord of the manor, &c., or a gamekeeper, and delivered as soon as may be into the custody of a peace officer. (9 *Geo. IV. c. 69, s. 2*.) Under the 1 & 2 *Will. IV. c. 32, s. 31*, certain persons are authorised to take into custody any person found upon land in search of game, and offending by refusing to give their real name, or continuing upon the land, &c. (See *post*, "*Game*," Vol. II.)

Hawking. *Hawkers and Pedlars.*—Any person may seize and detain any hawker, pedlar, &c., who shall be found trading without a license, con-

trary to the 50 Geo. III. c. 41, or who, being found trading, shall refuse or neglect to produce a license according to that Act in order to give notice to a peace officer. (50 Geo. III. c. 41, s. 20.) See *post*, "*Hawkers and Pedlars*," Vol. II.

2. *For what may be made.*

Highways.—The surveyor, assistant surveyor, or district surveyor, and any person acting with his authority, or any person witnessing the commission of offences against the 5 & 6 Will. IV. c. 50, may seize and detain any unknown person, and take him forthwith before a justice of the peace. (5 & 6 Will. IV. c. 50, s. 79.) See *post*, "*Highways*," Vol. II.

Larceny.—Under the Consolidated Statute relating to larceny and other similar offences, any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, excepting angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken with the property before a neighbouring justice of the peace. (24 & 25 Vict. c. 96, s. 103.) See *post*, tit. "*Larceny*," Vol. III.

Larceny.

Lighting and Watching.—Under the Lighting and Watching Act, amongst other offences, any person seeing a lamp, lamp-post, &c., wilfully broken, or its light wilfully put out, may apprehend the offender without a warrant, and deliver him to a constable, and any other person or persons may assist in apprehending. (3 & 4 Will. IV. c. 90, s. 55.)

Lighting and watching.

Malicious Injuries.—Under the Consolidated Statute relating to malicious injuries to property, any person found committing any offence against that Act, whether the same were punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant by any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace. (24 & 25 Vict. c. 97, s. 61.) See *post*, 296; tit. "*Malicious Injuries to Property*," Vol. III.

Injuries to property.

Manufacturers.—Peace officers, during the time they are on duty, may apprehend any person reasonably suspected of carrying certain materials suspected to be purloined between sunset and sunrise. (17 Geo. III. c. 56, s. 11.)

Merchant Shipping.—At the commencement or during the progress of a voyage, the master, mate, owner, ship's husband, or consignee, may apprehend any seaman or apprentice absenting himself without leave. (17 & 18 Vict. c. 104, s. 246.) See *post*, "*Seamen*," "*Ships*," Vol. V.

Merchant shipping.

Military Law.—Under the "Annual Mutiny Act," any person may apprehend a man upon reasonable suspicion that he is a deserter.

Deserters.

Navigable Rivers and Canals.—Persons found committing offences punishable upon summary conviction by virtue of the 3 & 4 Vict. c. 50, may be taken into custody without a warrant by a constable, or by the owner of any property against which any offence may be committed, or his servant, or any person authorised by him. (3 & 4 Vict. c. 50, s. 10; and see ss. 9, 10, 12.) See *post*, "*Rivers and Navigation*," Vol. V.

Rivers and canals.

Pawnbrokers.—Any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any offence under the 24 & 25 Vict. c. 96, as been committed on or with respect to such property, may apprehend the person offering. (24 & 25 Vict. c. 96, s. 103.) See "*Pawnbrokers*," Vol. III.

Pawnbrokers.

2. *For what may be made.* *Poor.*—4 & 5 Will. IV. c. 76, s. 92; 55 Geo. III. c. 137, s. 2; see tit. "*Poor*," Vol. IV.

Railways.—See "*Railways*," Vol. V.

Smuggling. *Smuggling.*—16 & 17 Vict. c. 107, ss. 234, 235, 247; see 3 & 4 Will. IV. c. 53, s. 53.

Swearing. *Swearing.*—Any persons profanely cursing or swearing in the presence and hearing of any constable or peace officer, if unknown to such constable, &c., may be seized and detained. (19 Geo. II. c. 21, s. 3.) See post, "*Swearing*," Vol. V.

Turnpikes. *Turnpike Roads.*—3 Geo. IV. c. 126, s. 40; *id.* s. 132—Under those sections certain persons committing offences against that Act may be apprehended without a warrant.

Vagrants. *Vagrants.*—Any person found offending against the "*Vagrant Act*," may be apprehended by any person. (5 Geo. IV. c. 83, s. 6.) See *Horley v. Rogers*, 2 E. & E. 674; 29 L. J. M. C. 140.

Loiterers. *Persons loitering.*—Under the Consolidated Statutes relating to larceny, or to offences against the person, any constable or peace officer may take into custody without a warrant any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he should have good cause to suspect of having committed, or being about to commit, any felony in either of those acts mentioned, and shall take such person as soon as reasonably may be before a justice of the peace. (24 & 25 Vict. c. 96, s. 104; *id.* c. 100, s. 66. See post, 297, and tit. "*Larceny*," Vol. III.) For the purposes of the former Act, "*night*" commences at nine o'clock in the evening and concludes at six in the morning; but in the latter Act, no definition of night is given. But by the 14 & 15 Vict. c. 19, s. 11, any person whatsoever may apprehend any person who shall be found committing any indictable offence in the night, and convey or deliver him to a constable. And s. 13 of that Act provides that the night shall commence and conclude in any offence against the provisions of this Act as in cases of burglary. And it so happens that the statute defining night for the purposes of cases of burglary in force at that time has been repealed, and the new statute does not touch the common law offence of burglary; but as night is defined so far as respects cases of burglary therein provided for to be from nine in the evening to six in the morning, that may be deemed to be the limit of the night for the purpose of the 14 & 15 Vict. c. 19, s. 11. (See post, "*Malicious Injuries to the Person*," Vol. III.)

Persons found committing an offence.

Construction of Statutes.—Where a statute gives a power to arrest a prisoner found committing an offence, he must be taken in the act, or in such continuous pursuit that from the finding until the apprehension, the circumstances constitute one transaction. (*Hanway v. Boulbee*, 4 C. & P. 350; *R. v. Curran*, 3 C. & P. 397; *Howarth's case*, 1 Moo. C. C. 207.) And where a statute gives a summary power to apprehend persons without a warrant "*found offending*," it may be taken as a general rule that it only applies to offences which are apparent to the eye, and not where the guilt or innocence of the supposed offender depends on a variety of circumstances, as, for instance, a person cannot be said to be "*found offending*" within the meaning of the "*Vagrant Act*," whose offence is alleged to be that, being able to maintain his family, he wilfully refuses to do so, whereby they have become chargeable to a parish, for that offence depends upon the concurrence of a variety of circumstances. (*Horley v. Rogers*, 2 E. & E. 674; 29 L. J. M. C. 140.) And where the prisoner is directed to be forthwith taken before a magistrate, he must be sent by the direct road to either the

"Found offending."

Mode of arrest.

lock-up till a magistrate can be procured, or direct to the magistrate, and must not be taken to the prosecutor's house in the first instance. (*R. v. Curran*, 3 C. & P. 397; *Morris v. Wise*, 2 F. & F. 51.) But if he be taken in the night time, he may, of course, be detained until the morning. (*Hunt's case*, 1 Moo. C. C. 93.)

And where the statute requires that the offender should be "immediately" apprehended, that would seem to mean that the apprehension must be on such quick pursuit as to make it one transaction with the finding. (*R. v. Curran*, *ubi supra*; *Howarth's case*, *ubi supra*.)

Besides the general Acts above mentioned, there are, of course, a number of local and special Acts which contain provisions on this subject with reference to carrying out their respective objects. Thus, under the "Metropolitan Police Act," (2 & 3 Vict. c. 47,) it has been held that a constable had no power to arrest without a warrant under ss. 54 and 63, unless the offence had been committed within view of the constable. (*Simmons v. Millengen*, 2 C. B. 524; 15 L. J. C. P. 102.)

So the 2 & 3 Vict. c. 94, does not give a constable power to take a person into custody without a warrant on suspicion that he has committed a misdemeanour. (*Bowditch v. Balchin*, 5 Exch. 378.)

(2.) ON SUSPICION OF HAVING COMMITTED AN OFFENCE.

In every case of treason or felony actually committed, a party may be arrested by any person, if there be reasonable ground to suspect him guilty. (2 Hale, 72; 2 Hawk. cc. 12, 13, s. 15; *Mure v. Kaye*, 4 Taunt. 43; *Guppy v. Brittlebank*, 5 Price, 525; *Beckwith v. Philby*, 6 B. & Cres. 635.)

On suspicion of guilt.

But as we have just seen, no person can in general be arrested without warrant for a mere misdemeanour, unattended with violence, after its commission, as perjury or libel (*ante*, p. 288); and it is very unusual for justices out of sessions to grant warrants in such cases, unless the offence be of such a magnitude as requires a warrant. (See *Butt v. Conant*, 4 Moore, 195; 1 Brod. & B. 548.)

And clearly, as a general rule, a private individual cannot arrest another without warrant, on the ground of suspicion of his having been guilty of a misdemeanour; (*Matthews v. Biddulph*, 4 Scott N. R. 54; *Fox v. Gaunt*, 3 B. & Ad. 798;) and the same rule also applies to constables and other conservators of the peace. (*Griffin v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134.)

In the case of a man apprehending a person offering goods for sale or pawn, where there is reasonable suspicion of their having been stolen, there is an express enactment that he shall be indemnified, though afterwards it appears that no felony was committed.

The grounds must be such that any reasonable person, acting without passion or prejudice, would fairly have suspected the party arrested of being the person who committed the offence. (*Allen v. Wright*, 8 C. & P. 522.) A bare surmise or suspicion is plainly insufficient. (*Leete v. Hart*, 37 L. J. C. P. 157, per Byles, J.; *Davies v. Russell*, 5 Bing. 364; 4 Inst. 144.)

If the conduct of the person arresting is impugned in an action for false imprisonment, a question arises as to whom does it belong to decide whether the defendant had reasonable cause of suspecting the plaintiff. The authorities conflict upon the point. In *Davis v. Russell* (5 Bing. 354,) and in *Stonehouse v. Elliott*, (6 T. R. 315,) the Court of Common Pleas held it to be the judge's province to decide whether the facts alleged constituted such reasonable cause, and for the jury to say whether the facts stated really existed, and the defendant acted upon their existence. But in *Wedge v. Berkeley*, (6 A. & E. 663,) the Court of Queen's Bench considered the question of reasonable and probable cause a question purely for the jury. In the later case, however, of *Broughton v. Jackson*, (18 Q. B. 378; 21 L. J. Q. B. 263,) it was treated as a question of

2. For what law may be made. law; and in the modern case of *Hailes v. Marks*, (7 H. & N. 56; 30 L. J. Ex. 389), see also *Hogg v. Ward*, (3 H. & N. 417; 27 L. J. Ex. 443), the Court of Exchequer held the question of reasonable cause to be purely one of law for the judge. It is to be observed, however, that *Bramwell*, B., grounds his decision upon the case of *Panton v. Williams*, (2 Q. B. 169,) without adverting to the fact that that was an action for malicious prosecution. It is submitted, however, that there is a clear distinction between the two cases, for whilst only judges or lawyers are competent to form an opinion upon what facts an action or an indictment would lie, and are thus the only persons competent to decide whether there was reasonable cause for instituting a prosecution, yet laymen are quite as competent as lawyers to say what affords a reasonable ground of suspicion against a particular person of having committed a crime. And thus it may well seem that in the one form of action the judge may direct the jury as to the reasonableness of the cause for a prosecution, leaving the jury to ascertain the truth of the facts alleged; and in the other the jury may have the question of reasonable cause of suspicion entirely left to them. The varying circumstances of each case make it impossible to lay down any standard or fixed rule as to what is a reasonable ground of suspicion. (*Hogg v. Ward*, *ubi sup.*; *Broughton v. Jackson*, *ubi sup.*) But the following causes of suspicion are stated in *Hawkins's Pleas of the Crown*, (bk. 2, c. 12,) to have been generally agreed to justify the arrest of an innocent person for felony:—

Common fame.

(1.) The common fame of the country; but it seems that it ought to appear upon evidence, in an action brought for such arrest, that such fame had some probable ground. (2 *Hawk.* c. 12, s. 9.)

Circumstances of guilt.

(2.) Being found in such circumstances as induce a strong presumption of guilt; as coming out of a house wherein murder has been committed, with a bloody knife in one's hand; or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them. (*Id.* s. 2.)

Flight.

(3.) The behaving one's self in such a manner as betrays a consciousness of guilt; as where a man accused of felony, on hearing that a warrant is taken out against him, doth abscond. (*Id.* s. 13.)

But the party who flies from an arrest for a capital offence, is not thereby guilty of a capital offence, but only liable to forfeit his goods, when such flight is found against him by the coroner's inquest. (2 *Hawk.* c. 17, s. 13.)

Evil company.

(4.) The being found in company with one known to be an offender, at the time of the offence, or generally at other times keeping company with persons of scandalous reputation. (2 *Hawk.* c. 12, s. 11; 2 *Inst.* 52.)

Living idle.

(5.) The living an idle, vagrant, and disorderly life, without having any visible means to support it. (2 *Hawk.* c. 12, s. 10; and see *post*, tit. "*Vagrant*," Vol. V.)

Hue and cry.

(6.) The being pursued by hue and cry. (2 *Hawk.* c. 12, s. 14.)

For if a felony be done, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, or indicted, he may be attached and imprisoned by the law of the land. (2 *Inst.* 42.)

And though generally no such cause of suspicion as any of the above mentioned will justify an arrest by a private individual where in truth no such crime hath been committed; yet it will be justified in the case of hue and cry, though no crime has been committed. (2 *Hawk.* c. 12, s. 16.)

Distinction on arrest by private individuals, and arrest by constable on suspicion.

There is a material distinction between arrests *without warrant* by private individuals and arrests by peace officers on *suspicion* of a felony. In order to justify the former in causing the imprisonment of a person without warrant, he must not only make out a *reasonable ground of suspicion*, but must prove that a *felony* has been actually committed, except in the case of hue and cry, or an indictment found against the

party; whereas a constable, having reasonable ground, on a charge preferred by another person, to suspect that a felony has been committed, is authorised to arrest the suspected party without warrant, and take him before a magistrate or other proper authority, although no felony has been committed. (*Beckwith v. Philby*, 6 B. & Cres. 637; *Hogg v. Ward*, 3 H. & N. 417; 27 L. J. Ex. 443; *Griffin v. Coleman*, 4 H. & N. 265; 23 L. J. Ex. 134; *Samuel v. Payne*, Doug. 359; *White v. Taylor*, 4 Esp. Rep. 80; *Cald.* 291; *Hobbs v. Branscomb*, 3 Camp. 420; *Stonehouse v. Elliot*, 6 T. R. 316.) If indeed a constable, of his own head, takes a person into custody on suspicion, he must, like a private individual, prove that a crime was actually committed by some one. (*Hobbs v. Branscomb*, 3 Campb. 420.)

3. By whom.

III. By whom the Arrest may be made.

In criminal cases, a person may be apprehended and restrained of his liberty, not only by process out of some court, or warrant from a magistrate, but frequently by justices, constables, watchmen, or private persons, without any warrant or precept.

By order of court of record, all judges of record have power to commit to the custody of their officer *sedente curiâ* by oral command without any warrant made at the time. (*Kemp v. Neville*, 10 C. B. N. S. 523; 31 L. J. C. P. 165.)

This proceeds upon the ground that there is in contemplation of law a record of such commitment, which record may be drawn up when necessary. (See *Throgmorton v. Allen*, 2 Rolle Ab. Trespass (c), part 2, 558; and the judgment of *Parke*, B., in *Watson v. Bodell*, 14 M. & W. 70; 14 L. J. Ex. 281.) No warrant is required for the execution of sentence of death for a like reason. (2 Hale P. C. 409, c. 57.) And a warrant, commitment, or written authority, is not necessary for the commitment by the court of a prisoner for the purpose of being again brought up for re-hearing. (*R. v. Gooding*, cited in *Davis v. Capper*, 10 B. & C. 34; and *Kemp v. Neville*, 10 C. B. N. S. 523; 31 L. J. C. P. 166.) As to commitment for contempt of court, see *post*, 294.

By Court of Record.

And it seems an arrest may be made without warrant, though there be no reason to suspect an escape. (*Davis v. Russell*, 5 Bing. 354; 2 Moo. & P. 590.)

(1.) BY JUSTICES OF PEACE.

¶ If a justice see a felony, or other breach of the peace committed in his presence, he may in his own person apprehend the offender. And he may also, by word of mouth, command any one to arrest another who shall be guilty of any felony, or actual breach of the peace, in his presence, and such command is a good warrant without writing. (2 Hale, 86; *Still v. Walls*, 7 East, 536.)

By justices of the peace.

Any justice or the sheriff may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors and felons, or such as break, or go about to break, or disturb, the queen's peace, and every man being required ought to assist and aid them, on pain of fine and imprisonment. (*Dalt. J. c.* 171; 2 Hale, 87.)

And as long as he fills that character he appears to enjoy the same latitude as a constable of arresting a person on reasonable suspicion of having committed a felony, without being called upon to prove that the felony has actually been committed; (2 Hale, bk. 2, cc. 11 and 13;) and that as well when he acts upon his own inferences drawn from what he has seen as upon information derived from others. (2 Hale, 86; *Wedge v. Berkeley*, 6 A. & E. 663.) But in misdemeanours not connected with a

3. *By whom.* breach of the peace, as perjury, &c., the justice should not act except on a charge formally laid before him. (See *Hazeldine v. Grove*, 3 Q. B. 997.) If a justice commits an illegality in arresting or causing a person to be arrested without warrant, he is entitled to the protection of the general statute, of the 11 & 12 Vict. c. 44, or any other special Act passed since, and either particularly regulating the proceedings of the justice, or referring to the particular offences in reference to which the illegal act was done. Thus it is enacted by the 11 & 12 Vict. c. 44, sect. 8, "No action shall be brought against any justice of the peace for anything done by him in the execution of his office unless it be commenced within six calendar months next after the act complained of shall have been committed," and a month's notice of action previous to its commencement; and the *venue* must be laid in the county where the act was done, and the justice may tender amends. To entitle a justice to the benefit of this Act, he must have acted *bond fide* and not colourably in the execution of his office, or to discharge an old grudge or otherwise in bad faith. (*Wedge v. Berkeley*, 6 A. & E. 663; *Hazeldine v. Grove*, 3 Q. B. 997; *Downing v. Capel*, 36 L. J. M. C. 97.) Thus, a justice who, on the hearing of a case, ordered a witness whom he believed to have been guilty of perjury into a room until the case was concluded, and afterwards bailed him until a future day, when the depositions of witnesses were taken, and he was committed, is entitled to the protection of the statute, though he may have committed an illegality in the first instance in confining the person in a room when there was no direct charge against him. (*Hazeldine v. Grove*, *ubi sup.*)

Protection of, by Statute.

And it was observed by Chief Justice *Pratt*, in *R. v. Wilkes*, (2 Wils. 158,) that in case a magistrate has notice, or a particular knowledge, that a person has been guilty of an offence, yet it is not a sufficient ground for him to commit the criminal, but in that case he is rather a witness than a magistrate, and ought to make oath of the fact before some other magistrate, who shall thereupon act the official part, by granting a warrant to apprehend the offender, it being more fit that the accuser should appear as a witness than act as a magistrate.

A magistrate ought never to act as such in his own case. (*Dalt.* c. 173; *Anon.* 1 Salk. 396; *post*, "Justices," Vol. III.)

For a contempt of court.

If a contempt be committed in the face of a court, (as by rude and contumelious behaviour, by obstinacy, perverseness, or prevarication, by breach of the peace, or any wilful disturbance whatever,) the judge may order the offender to be instantly apprehended and imprisoned at his, the judge's discretion, without any further proof or examination. (2 Hawk. c. 22; *Spilsbury v. Micklethwaite*, 1 Taunt. 146; *R. v. James*, 5 B. & Ald. 894; 1 D. & R. 559; *Cropper v. Horton*, 8 D. & R. 166.)

It has been held that the exhibiting in an assize town an inflammatory publication respecting a crime about to be tried at the assizes was not a contempt which the judge of assize could interfere to stop by committing the party exhibiting it. (*R. v. Gilham, M. & M. N. P. C.* 165.)

(2.) BY SHERIFFS AND CORONERS.

By sheriffs.

In addition to the powers of a private individual the sheriff, as a conservator of the peace in the county, may apprehend and commit to prison all persons who break the peace or attempt to break it, and he may and is bound ex-officio to pursue and take all traitors, murderers, felons, and rioters, and those who aid and assist him are equally justified with him. (*Watson on Sheriffs* 2; 2 Hale P. C. 87.) And if a sheriff is assaulted in the execution of his duty he may apprehend the offender and keep him in prison for a reasonable time, to be carried before a magistrate, (2 Hale, 87; *Lowe v. King*, 1 Wm. Saund. 76; 1 Lev. 216,) and may have a person apprehended and taken before a magistrate

who interrupts the proceedings on an election of a member of Parliament. (*Spilsbury v. Micklethwaite*, 1 Taunt. 146.) 3. By whom.

A coroner is a conservator of the peace in relation to all felonies, and may arrest, or cause another to arrest, any felon. (2 Hale, 88; 4 Step. Com. 411, ed. 4.) By coroners.

(3.) BY CONSTABLES.

Constables as conservators of the peace may, at common law, arrest any person without warrant on the reasonable belief that they have committed a felony, but that doctrine does not extend to misdemeanours. (*Griffin v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134.) In acting upon a charge made by a third person, he must exercise ordinary reason, care, and caution, and if, having done so, he apprehend a supposed felon without warrant upon a reasonable charge with reference to the circumstances, he is justified, although, upon investigating the charge, it turn out that no felony has been committed, but if the charge does not rest upon reasonable grounds he will be liable for the illegal arrest. (*Hogg v. Ward*, 3 H. & N. 417; 27 L. J. Ex. 446; *Davis v. Russell*, 5 Bing. 344; *McClougan v. Clayton*, Holt, C. N. P. 470; *Beckwith v. Philby*, 6 B. & C. 637; *Samuel v. Payne*, Dougl. 359; *Baees v. Brand*, 2 Stark. Rep. 167; 1 East, P. C. 298, 301.) By constables.

Therefore, as it is no part of his duty to arrest a man upon the order of a private individual, (*Parton v. Williams*, 3 B. & Ald. 334,) if a constable act upon an unreasonable charge, or of his own accord, or upon his own suspicion, without any express charge or warrant, and not on view, he does it at his own peril as much as if he were a private person, but if it turn out that the party arrested has committed a felony, he is justified; so also if he has acted on his own suspicion that a felony has actually been committed by some one, and he had reasonable ground for suspecting the party arrested of it, he is also justified; (*Hogg v. Ward*, *ubi sup.*; *Parton v. Williams*, 3 B. & Ald. 334; *Postlethwaite v. Gibson*, 3 Esp. 227;) but from the necessity of certain cases, a constable may, even at common law, justify the arrest of persons, on his own suspicion, of felony, without the necessity of showing that a felony has really been committed, as the arresting of unknown persons carrying bundles in the night time. (*Laurence v. Hedges*, 3 Taunt. 14.) Except in the above exceptional case, it seems the question of the liability of a constable who, acting upon his own reasonable inferences from what he saw subsequently to the supposed felony, arrests a man on a suspicion of felony, and it turns out that then no felony had been in fact committed, though the suspicions were reasonable, has never been decided; but if such should arise he might perhaps be deemed to be justified if the jury considered that his suspicions were reasonable under the circumstances, and that he at the time *bonâ fide* believed himself to be acting in the execution of his duty as a constable, and not from any sinister purpose of his own. As we have before said, at common law not even a constable has any authority to arrest a person without warrant on an ordinary charge of misdemeanour, (*R. v. Curvan*, 1 Moo. C. C. 132; see per *Collman, J.*, in *Reg. v. Phelps*, Car. & M. 185,) except in such offences as tend to a breach of the peace, or are actual breaches of the peace. Breaches of the peace. With reference to breaches of the peace, a constable may, by virtue of his office, interpose upon his own view for the purpose of preventing a threatened and imminent breach of the peace, and all persons called by him to his assistance in such interposition are protected, (1 East, P. C. 303,) and to accomplish his object may arrest the person menacing, and detain him in custody till the chance of the threat being executed is over, and carry him as soon as conveniently may be before a magistrate; (2 Hale, 88; 2 Hawk. c. 12, s. 20; *Cohen v. Huskisson*, 2 M. & W. 482; *Reg. v. Light*, 1 D. & B. 339; 27 L. J. M. C. 1, per *Williams, J.*;)

3. By whom. but if the threat seems an idle one, and there has been no breach of the peace, the arrest would not be justifiable. (*R. v. Bright*, 4 C. & P. 387; *Wheeler v. Whiting*, 9 C. & P. 262.) For an assault or breach of the peace, or for an attempt to commit a felony, committed within his own view, a constable may arrest the offender and keep him in custody until he can conveniently take him before a magistrate, (*Derecourt v. Corbishley*, 5 E. & B. 188; 24 L. J. Q. B. 313.) but if the arrest is not made on the instant it must be made so recently after as to make it all one transaction. (*Light's case*, *ubi sup.*; *Walker's case*, 1 Dears. C. C. 358; 23 L. J. M. C. 123; *Howarth's case*, 1 Moo. C. C.; *Hunt's case*, *id.*; *Howell v. Jackson*, 6 C. & P. 723; *Cook v. Nethercote*, 6 C. & P. 741.)

But a constable has not, without warrant, any authority to apprehend a person upon a charge of a mere breach of the peace after it is over, unless there is danger of its renewal, and in that case he may do so, and may take him before a magistrate, both for the purpose of his being punished for the breach committed, and to prevent a renewal of it. (*Price v. Seeley*, 10 Cl. & Fin. 28, and the cases above cited; *Baynes v. Brewster*, 2 Q. B. 375; *Derecourt v. Corbishley*, 24 L. J. Q. B. 313.) In misdemeanours, other than breaches of the peace, in his view a constable cannot in general arrest another without warrant, though a doubt has been thrown upon the distinction between the different kinds of misdemeanour. (*Fox v. Gaunt*, 3 B. & Ad. 798; *Matthews v. Biddulph*, 4 Scott, N. R. 54; 1 Doubl. N. S. 216; *Griffin v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134.)

The detention in custody must not be longer than is necessary in order to take a prisoner before a justice. The justice may order him to be detained till the witnesses are brought, but the constable has no authority to detain him until that time without such order. (*Wright v. Court*, 4 B. & C. 596.)

So he may apprehend any person who encourages a prisoner in his custody to resist, (*White v. Edmunds*, Peate, 89,) or otherwise obstruct him in the execution of his duty, (*Levy v. Edwards*, 1 C. & P. 40,) or any one joining in the offence. (*Lewis v. Arnold*, 4 C. & P. 354.)

A constable may be justified in removing a person from a church for disturbing the congregation in time of divine service, although no part of such service was actually going on at the time, but he has no right to detain such person in custody afterwards for the purpose of taking him before a magistrate. (*Williams v. Glenister*, 2 B. & C. 699.) And it seems that the churchwardens have the same power. (*Burstow v. Henson*, 10 M. & W. 105.)

Larceny, &c., and
malicious injuries
to property.

Under the "Larceny Act," (24 & 25 Vict. c. 96, s. 103), and "The Malicious Injuries to Property Acts," (24 & 25 Vict. c. 97, s. 61), any person found committing any offence under those Acts respectively may be immediately apprehended without a warrant, and forthwith taken before a neighbouring justice. These provisions are in the same words as the repealed provisions on this subject. To bring a case within this section the person must be found committing the offence, (*Roberts v. Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65,) and, therefore, if he was found in the next field with property in his possession suspected to be stolen out of the adjoining one, it is not sufficient, (*R. v. Curran*, 3 C. & P. 397,) but, if seen committing the offence, it is enough if the apprehension is on quick pursuit. (*Hanway v. Boulbee*, 4 C. & P. 350.) The person must be immediately apprehended, therefore; probably the next day would not be soon enough, though the lapse of time necessary to send for assistance would be allowable; (*Morris v. Wise*, 2 F. & F. 51; *Hanway v. Boulbee*, *ubi sup.*;) but an interval of three hours between the commission of the offence and the discovery and commencement of pursuit is too long to justify an arrest without warrant under those statutes. (*Downing v. Capel*, 36 L. J. M. C. 97; *Lectre v. Hart*, 37 L. J. C. P. 157.)

The person must be forthwith taken before a neighbouring justice, and, therefore, it is not complying with the statute to take him to the prosecutor's house first, though only half-a-mile out of the way, (*Morris v. Wise, ubi sup.*; *Hanway v. Boulton, ubi sup.*) unless, indeed, it were in the night time, and then he might probably be kept in such a place until the morning. (*Hunt's case, 1 Moo. C. C. 93.*)

Under the Act relating to offences against the coinage, (24 & 25 Vict. c. 99, s. 31.) a peace officer, constable, or officer of police may receive into his custody without warrant any person found committing any indictable offence against that Act. Coinage.

Under the Acts relating to larceny, and to malicious injuries to property, and to offences against the person, (24 & 25 Vict. cc. 96, 97, 100, respectively,) power is given in almost identical terms to any constable or peace officer to take into custody without warrant any person whom he shall find lying or loitering in any highway, yard, or other place *during the night*, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against that Act, and to take such person before a justice of the peace. Night time.

Under the "Metropolitan Police Act," (2 & 3 Vict. c. 47,) constables acting within the metropolitan police district have powers of arresting without warrant in certain cases provided by that Act, under ss. 54, 63, 64, 65, 66, but to justify the constable acting under ss. 54 and 63, he must have been actually present and have seen the offence committed, and it is not enough that the owner of the house saw it and gave the offender into custody of the constable. (*Simmons v. Millingen, 2 C. B. 524*; *15 L. J. C. P. 102.*) And under the "City of London Police Act," (2 & 3 Vict. c. 94,) similar powers are conferred on city constables, and the section of this Act does not give a constable power to take any person into custody without a warrant on suspicion that he has committed a misdemeanour. The offender must be a loose, idle, and disorderly person to justify that step. (*Bowditch v. Balchin, 5 Exch. 378.*) Metropolitan Police Act.

Constables appointed for places subject to the provisions of the "Towns Police Clauses Act, 1847," and the special Act incorporating it, have the powers and duties of constables at common law. And by the 51st section any person found committing any offence punishable upon indictment or as a misdemeanour on summary conviction, by virtue of that or the special Act, may be taken into custody without a warrant by a constable, &c., to be detained as long as is necessary to take him before a justice, but not longer than forty hours. 10 & 11 Vict. c. 89 (Towns Police Clauses Act.)

County and district constables appointed under the 2 & 3 Vict. c. 93, have the powers, &c., of constables at common law. Borough constables appointed by a watch committee under the provisions of the "Municipal Corporations Act," have the powers, &c., of constables at common law. (See *post*, tit. "Corporation" (*Municipal*)). 2 & 3 Vict. c. 93.

By the 27 & 28 Vict. c. 47, s. 6, any constable or police officer may, without warrant, take into custody any holder of a license granted under the "Penal Servitude Acts," whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his license, and may detain him in custody until he can be taken before a justice of the peace or other competent magistrate and dealt with according to law. Municipal Corporations Act.
Penal Servitude Acts (27 & 28 Vict. c. 47).
Licensee.

Where a constable acts without warrant, by virtue of his office of constable, he should, unless the party be previously acquainted with it, notify that he is a constable, or that he arrests in the Queen's name, and for what. (See *1 Hale, 458, 589*; *1 Hawk. 31, ss. 49, 50*; *Mackally's case, 9 Co. 69*; "Homicide," Vol. II.) And this applies more particularly to a special bailiff. (*2 Russ. 737.*) But it will, it should seem, be sufficient, if from the circumstances the offender may collect he is a constable: and if he show his staff of office it will suffice. (*1 Hale, 460*; *Post. 310*; *1 Russ. 738.*) And in the case of an arrest by a He should notify his authority.

3. By whom.

3. By whom. private person, it has been held, that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal and the resistance illegal, as much as if he had been told. (*R. v. Howarth*, 1 *Moo. C. C.* 207.)

May be indicted for neglect.

If, upon a reasonable charge of felony or other crime for which a constable may arrest without warrant, the constable refuse to arrest, or make hue and cry, he may be indicted and fined; (*Cro. Eliz.* 654; 2 *Hale*, 90; 1 *East's P. C.* 301; 2 *Hawk. c.* 13, s. 7;) or by statute he is sometimes punishable summarily, as by the "Vagrant Act," 5 Geo. IV. c. 83.

Best for constable to have a warrant.

It is much the best for the constable in all cases, not requiring immediate interference, to obtain a magistrate's warrant before apprehending a party, and if he does he will be entitled to the benefit of the 24 Geo. II. c. 44, s. 8, which protects him when acting under a warrant on his granting on request a copy thereof. (See *post*, tit. "Constable.")

(4.) BY WATCHMEN, BEADLES, &c.

By watchmen, beadles, &c., at common law.

Watchmen, patrols, and beadles have authority at common law to arrest and detain in prison, for examination, persons walking in the streets at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. (*Lawrence v. Hedger*, 3 *Taunt.* 14; 2 *Hale*, 96, 98; 1 *East's P. C.* 303; 2 *Inst.* 52; and see 5 Geo. IV. c. 83, s. 3; "Vagrant," Vol. V; and *ante*, 290.)

In *R. v. Bootie*, (2 *Burr.* 864,) there is an indictment against a constable for suffering a street-walker, taken up by a watchman, to escape.

The "Metropolis Road Act" gives various powers to watchmen in apprehending individuals. (7 Geo. IV. c. 142, ss. 73, 74; and see tit. "Highways," Vol. III.)

Other statutes give the same power to peace officers generally as constables have to apprehend persons suspected of a felony. (24 & 25 Vict. c. 96; *ante*, 289; "Police," Vol. III.)

A watchman having apprehended a party may discharge himself from liability for an escape by delivering him to a constable, or he may himself take him before a magistrate. (*Dalt. J. c.* 104; *R. v. Bootie*, 2 *Burr.* 864.)

Watchmen may be appointed by constables as their assistants, subject to the custom of the place for the appointment of watchmen; and a watchman thus appointed has for the time being the authority of the constable as his deputy. (1 *Bla. Com.* 4th ed. 292; 1 *Chit. C. L.* 24.) But now they are employed and paid by particular parishes, or sometimes by private individuals. (2 *Hale, P. C.* 98; 3 *Inst.* 52; 9 *Rep.* 661 ?)

By statute 3 & 4 Will. IV., c. 90.

Watchmen and patrols of parishes which have adopted the "Lighting and Watching Act," have their duties enumerated by the 41st section, (3 & 4 Will. IV. c. 90,) and have the powers and authorities of constables at common law conferred upon them by the 42nd section.

Under Municipal Corporations Act.

The watch committee for a borough under the "Municipal Corporations Act," may appoint constables who have the powers and privileges of constables at common law, within the limits of the place for which they are appointed. (See *post*, tit. "Corporations" (*Municipal*).)

(5.) BY PRIVATE PERSONS.

By private persons when enjoined.

All persons who are *present* when a felony is committed, or a dangerous wound given, are *bound* to apprehend the offender, on pain

of being fined and imprisoned for their neglect, unless they were under age at the time. (2 *Hawk.* c. 12, s. 1.)

Also every private person is bound to assist an officer demanding his help for the lawful taking of a felon, or the suppression of an affray, (*Id.* s. 12; *R. v. Phelps, Car. & M.* 180; *R. v. Curran*, 1 *Moo. C. C.* 132,) and may be indicted if he refuses without lawful excuse. (*Reg. v. Brown*, 1 *C. & Mar.* 314.)

And it is the duty of all private persons to arrest without warrant any person detected in the attempt to commit a felony. (*R. v. Hunt*, 1 *Moo. C. C.* 93; *R. v. Howarth*, 1 *Moo. C. C.* 207.) And though the offender run away, and give over his intention of committing the felony, still it seems, on fresh pursuit, he may be apprehended by any one. (*R. v. Howarth*, 1 *Moo. C. C.* 207.)

We have already seen that if a felony has been actually committed by some one, a private person may arrest, or direct a peace officer to arrest a party whom he has reasonable grounds for suspecting to have been guilty of it, though in fact such party be really innocent; but he is not absolutely bound to do so like a peace officer; and he does so at his peril, for if these grounds for suspecting the party be not reasonable, or there has been no felony committed, the person arresting is guilty of a false imprisonment, and liable accordingly. (See *ante*, 292.)

When permitted.

Where an indictment is found against a party, a private individual may arrest him; for in this case he does not act on his own suspicion, but upon the finding of the fact by the grand inquest on oath, which is suspicion grounded on high authority, and is a charge against the party on record. (*Dalt.* c. 170, s. 5; 1 *East's P. C.* 300.)

After indictment found.

Any person may, it is said, legally arrest in the night time a suspicious night-walker, though he be quite innocent. (1 *East's P. C.* 303; 2 *Hawk.* c. 12, s. 20; per *Lawrence, J.*, in *Lawrence v. Hedger*, 3 *Taunt.* 15.)

Night walker.

He may arrest a common notorious cheat going about the country with false dice, and being actually caught playing with them, in order to take him before a justice. (*Jones*, 249; *Cro. Car.* 274; and see 2 *Hawk.* c. 12, s. 20.)

Cheat.

So any one may arrest a lunatic who seems disposed to do mischief (*Bac. Ab. Trespass* [D. 3]); but to justify such an act it must appear that the person really was a dangerous lunatic and not merely that he conducted himself so as to appear to be so. (*Fletcher v. Fletcher*, 1 *E. & E.* 420; 28 *L. J. Q. B.* 134; *Bac. Abr. "Trespass"* [D. 3]; 16 & 17 *Vict. c.* 96, s. 13.)

Lunatic.

So any person may arrest another for the purpose of putting a stop to a breach of the peace committed in his presence. (*Ante*, p. 295; 2 *Hawk.* c. 13, s. 8; *Timothy v. Simpson*, 1 *C. M. R.* 762; *ante*, tit. "Affray," p. 57.) Care must be taken, however, that what had occurred did actually amount to a breach of the peace. Where a man and his wife refused to go out of the shop of a baker, and continued to abuse him in relation to an alleged overcharge, until a crowd of one hundred to one hundred and fifty persons collected round the shop, and obstructed the public passage: it was held, that the baker was justified in giving the man and his wife into custody, and that their conduct amounted to a breach of the peace, and that trespass would not lie. (*Webster v. Watts*, 11 *Q. B.* 311; *Cohen v. Huskisson*, 2 *M. & W.* 477; *Ingle v. Bell*, 1 *M. & W.* 516.) But proof of annoyance and disturbance by a person present at a meeting, such as crying "Hear, hear," and putting questions to a speaker, and making observations on his statement, will not justify the chairman of the meeting in giving such person in custody. (*Wooding v. Oxley*, 9 *Car. & P.* 1.) Nor is it a sufficient plea to an action for false imprisonment that the defendant was possessed of a house, and that the plaintiff was then making a great disturbance therein, and refused to depart when requested, and was in a great heat and fury, ready and desirous to make an affray, and cause a breach of the peace, whereupon the defendant gave the plaintiff into

Breaches of the peace.

3. By whom. custody; (*Wheeler v. Whiting*, 9 C. & P. 269;) but if a person comes into a house or is in it, and makes a noise, and disturbs the peace of the family, although no assault has been committed, the master of the house may turn him out or call a policeman to do so; therefore, if a servant make such a disturbance and abuse his master, or insult him, the master is justified in turning him out of the house. (*Shaw v. Chairtie*, 3 C. & K. 21.)

A private person is justified in ordering a constable to do whatever the constable by virtue of his office is justified in doing; (*Derecourt v. Corbishley*, 5 E. & B. 188; 24 L. J. Q. B. 313; *Cohen v. Huskisson*, 2 M. & W. 481; *White v. Edmunds, Peake*, 123;) but neither a private person nor a constable is justified in arresting an affrayer without a warrant, when the affray is over and there is no danger of its renewal, for the object for which the power of interfering by arrest is given in such a case, namely, the preservation of the peace, has then been accomplished. (*Price v. Seeley*, *ubi sup.*; *Baynes v. Brewster*, 2 Q. B. 375; *R. v. Light*, 1 D. & B. 339; 27 L. J. M. C. 1; *R. v. Walker, Dears*, C. C. 358; 23 L. J. M. C. 123.)

It seems, however, that he may arrest if there are good and reasonable grounds for apprehending that an affray or other breach of the peace will be continued or renewed. "It is clear (said *Parke*, B., in *Timothy v. Simpson*, 1 C. M. & R. 762.) that any person present may arrest the affrayer, at the moment of the affray, and detain him till his passion has cooled and his desire to break the peace has ceased, and then deliver him to a peace officer. And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it? Both cases fall within the same principle, which is, that for the sake of the preservation of the peace any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his acts. In truth, whilst those are assembled together who have committed acts of violence, and the danger of their renewal continues, the affray itself may be said to continue; and during the affray the constable may not merely on his own view, but on the information and complaint of another, arrest the offender, and of course the person so complaining is justified in giving the charge to the constable." And see *Baynes v. Brewster*, 1 G. & D. 669; *Price v. Seeley*, 10 Cl. & Fin. 28.

By the "Vagrant Act," 5 Geo. IV. c. 83, s. 6, any person whatever may apprehend an offender under that Act, and convey him before a justice, or deliver him to a constable for that purpose. (See "Vagrant," Vol. V.)

Persons found committing an offence against the "Malicious Injuries Act," may be apprehended without warrant by any peace officer, the owner of the property, his servant, or person authorised by him, see *ante*, 289, 290, 296. So, with respect to offences against the "Larceny Act," the "Game Act," and the "Smuggling Act," the offender may be apprehended by any person. (See *ante*, 289.)

By the "Larceny Act," 24 & 25 Vict. c. 96, s. 103, where any property is offered to be sold or pawned to any person, if he has reasonable cause to suspect the party offering it, such person is not only authorised but required (if in his power) to arrest the party, and carry him before a justice.

Under the "Police Acts," private persons may also arrest in certain cases without warrant. (*Post*, tit. "Police," Vol. V.)

Before a private person interferes to prevent a breach of the peace, as an affray, he is bound to notify his intention of so doing, otherwise the parties engaged may imagine that he comes to act as a party. (1 *East's P. C.* 306; *Post*, 310.) But where the circumstances are such that a man must know why a person is about to arrest him, he need

not be told, and the arrest will be legal, and the resistance illegal, as much as if he had been told. (*R. v. Howarth*, 1 Moo. C. C. 207.)

It is always safest for a private person to obtain a warrant when time will allow, because where the arrest is under a warrant no action of trespass, but only an action on the case, lies, and the latter cannot be sustained unless the plaintiff can show that the charge was without probable cause as well as malicious; and if the magistrate should erroneously issue his warrant, the party accusing will not in general be liable as a trespasser. (*West v. Smallwood*, 3 M. & W. 418; *Leigh v. Webb*, 3 Esp. 166; *Belk v. Broadbent*, 3 T. R. 185; *Boote v. Cooper*, 1 T. R. 535.) But an arrest, when a warrant ought previously to have been issued, will not be rendered legal by a subsequent issuing of that authority. (*Bac. Ab. "Trespass"* [D. 3].)

In *Fox v. Gavint*, (3 B. & Adol. 798,) Lord Tenterden remarked, that in cases of misdemeanour it was much better that parties should apply to a magistrate for a warrant than take the law into their own hands, which they were too apt to do.

A person who has intended to act in pursuance of the powers given him by a statute to arrest is generally entitled, by the provisions of the Act, to notice of any action being about to be brought against him for any thing done thereunder; but in such case he must honestly have believed not only that he was right in law, but that facts existed which, if they did, would justify him. (*Roberts v. Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65; *Leete v. Hart*, 37 L. J. C. P. 157.)

4. Time and Place of.

Safest to obtain a warrant.

Notice of action.

IV. Time and Place of Arrest.

A person charged on a criminal account may be apprehended at any time in the day or night. (9 Co. Rep. 66; *Davis v. Russell*, 5 Bing. 354.)

Time of arrest.

The statute 29 Car. II. c. 7, s. 6, prohibits arrests on Sunday, except in the cases of treasons, felonies, and breaches of the peace. (See "*Lord's Day*," Vol. III.)

No place affords protection to offenders against the criminal law, and they may be arrested any where and whoever they may be. (See *Bac. Ab. "Trespass"* [D. 3].) Not even is a person's own house a sanctuary for him, and doors may be broken in order to obtain an entrance, for the purpose of taking a person on a charge of felony where a felony has been committed or a dangerous wound given, or where an officer of justice comes armed with process founded on a breach of the peace, provided that due notice of the business, demand of entrance and refusal of admission has been previously made; but bare suspicion touching the guilt of the party will not warrant a proceeding to this extremity, though a felony has been actually committed, unless the officer comes armed with a warrant from a magistrate grounded on that suspicion; (*Fost. Cr. L.* 319, 320;) and to prevent murder being committed a house may be broken and the intended murderer be arrested therein, whether it is his own house or not. (*Handcock v. Baker*, 2 Bos. & P. 260.)

Place of arrest.

If a person having committed a felony abroad come here, he may be arrested here, and conveyed and given up to the authorities of the country, against the laws of which the offence was committed. (*Mure v. Kaye*, 4 Taunt. 34, per *Heath*, J.)

Where a party against whom a true bill for perjury had been found, and a warrant for her apprehension granted, was apprehended abroad, and brought here in custody and committed to prison for want of bail, the court refused to discharge her on the ground that she had been improperly apprehended in a foreign country, but left her to her action if she had any cause. (*Ex parte Scott*, 4 Man. & R. 361; 9 Barn. & Cres. 446.)

5. *Manner of.*V. *The Manner of an Arrest.*

Notifying
authority.

Where a constable acts without warrant by virtue of his office of constable, he should, unless the party be previously acquainted with it, notify that he is constable, or that he arrests in the Queen's name, and for what. (See 1 *Hale*, 458, 589; 1 *Hawk.* 31, ss. 49, 50; *Mackalley's case*, 9 *Co.* 69.) And this applies also to a special bailiff, (1 *Russ.* 840, ed. 4) but still more to a private person who interferes either to prevent a felony or a breach of the peace, otherwise the parties engaged may suppose that he is come to act as a party, or at all events may treat it as an interference unwarrantable with their liberty, or as an aggression on their private property, which they would be justified in resisting to the utmost; (*R. v. Ricketts*, 1 *East*, *P. C.* 306; *Fost.* 310; 3 *Campb.* 68; and see *Lannock v. Brown*, 2 *B. & A.* 594;) unless, indeed, the circumstances are such that the offender cannot fail to be aware that the person interfering is either a constable, as if in the day time the officer be within his proper district or known, or be generally acknowledged to bear the office he assumes; or if in order to keep the peace he produce his staff of office, or any other known ensign of authority; but if it be indeed in the night time when such ensigns of authority cannot be distinguished, some further notification is necessary, and then commanding of the peace or using words of the like import, notifying his business will be sufficient; (1 *East*, *P. C.* 314;) or if a private person is carrying out the law. (1 *Hale*, 460; *Fost.* 310; 1 *Russ.* 840, ed. 4; *R. v. Howarth*, 1 *Moo. C. C.* 207.) And in a case where a warrant is necessary to justify a constable in arresting, he must have the warrant ready to be produced at the time of the arrest if called for, and if he has it not with him, but either at the station-house or at home, the arrest will be illegal. (*Galliard v. Laxton*, 2 *B. & S.* 363; 31 *L. J. Q. B.* 123; *M. C.* 125.)

Manner of arrest,
and what
constitutes one.

In making the arrest, the constable or party making it should actually touch the offender's body, or otherwise restrain his liberty. So if the officer merely touch the hand of the party through the broken pane of glass of a window, and say "you are my prisoner," it is a good arrest, and the officer may proceed to break open the outer door of the house to complete it. (*Sandon v. Jervis*, *E. B. & E.* 935; 27 *L. J. Q. B.* 279; affirmed in Exchequer Chamber.) The mere requiring the party to go before the justice is no arrest or imprisonment; (*Dalt.* 170; *Berry v. Adamson*, 6 *B. & C.* 528; *Gage v. Radford*, 3 *C. & P.* 464;) for bare words will not make an arrest, without touching the person. But if an officer come into a room, and tell the party he arrests him, and lock the door, this is an arrest; for he is in custody of the officer. (*Genner v. Sparkes*, 1 *Salk.* 79; 2 *Hawk.* c. 19, s. 1; *Williams v. Jones*, *Cas. temp. Hardw.* 301; *Grainger v. Hill*, 4 *B. N. C.* 212; and see *Arrowsmith v. Le Mesurier*, 2 *N. R.* 211; *Bridgett v. Coyney*, 1 *Man. & Ryl.* 211, 215; *M. & M.* 244.) So if the officer or other person say to a party, "I arrest you," and the party acquiesce and go with him, this will be a good arrest. (*Rupen v. Lucas*, 1 *C. & P.* 153; see also *Bird v. Jones*, 7 *Q. B.* 742; 15 *L. J. Q. B.* 82.)

Taking the power
of the county.

A private person cannot raise power to arrest or detain a felon. (1 *Hale*, 601.)

But any justice, or the sheriff, may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors, murderers, robbers, and other felons; or such as do break, or go about to break, or disturb the Queen's peace: and every man, being required, ought to assist and aid them, on pain of fine or imprisonment, (*Dalt.* c. 171; and *Reg. v. Brown*, 1 *C. & Mar.* 314.)

It is not justifiable for a justice, sheriff, or other officer, to assemble the *posse comitatus*, or raise a power or assembly of people, upon their own heads, without just cause. (*Id.*)

But where a justice, sheriff, or other officer, is enabled to take the

power of the county, it seemeth they may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, and all other persons being above the age of fifteen years, and able to travel. (*Id.*)

Women, ecclesiastical persons, and such as be decrepit or diseased, shall not be compelled to attend them. (*Id.*)

And in such case it is referred to the discretion of the justice, sheriff, or other officer, what number they will have to attend on them, and how and after what manner they shall be armed or otherwise furnished. (*Id.* See further, *post*, "*Hue and Cry*," Vol. II.)

It seems to be the better opinion that a *private individual*, in order to justify breaking open doors *without warrant*, must in general prove the actual guilt of the party arrested, and that it will not suffice to show that a felony has actually been committed by another person, or that reasonable ground of suspicion existed; but that an *officer*, acting *bond fide* on the positive charge of another, will be excused, and the party making the accusation will alone be liable. (*Doughl.* 358; 1 *Hale*, 583; 2 *Hale*, 92; and the cases and law fully collected in 1 *Chit. C. L.* 53; see *ante*, p. 301.)

Breaking outer doors.

But the breaking an outer door is, in general, so violent, obnoxious, and dangerous a proceeding, that it should be adopted only in extreme cases, where an immediate arrest is requisite.

In the case of a misdemeanour a demand of admittance should always be first made before breaking open outer doors. (*Lannock v. Brown*, 2 *B. & Ald.* 592; 2 *Hawk.* c. 14, s. 1.) No precise form of words of demand is necessary.

Even a private individual may break and enter a party's house, and imprison him, in order to prevent him from murdering his wife, who cries out for assistance. (*Handcock v. Baker*, 2 *B. & P.* 260.)

When an affray is made in a house in the view or hearing of a constable, he may break open the house in order to suppress it; (2 *Hale*, 95; 1 *Hawk.* c. 63; 2 *Hawk.* c. 14;) and the like where those who have made an affray in his presence, fly to a house and are immediately pursued by him. (2 *Hawk.* c. 14, s. 8.)

So if there be a disorderly noise or disturbance in a house at an unseasonable time of *night*, and especially in an inn, a constable or his watch may break into it to see and suppress the disorder. (2 *Hale*, 95.)

So when a person escapes from a lawful arrest, and shelters himself in a house, the constable may break into it and re-take him, whatever the cause of the arrest may have been. (2 *Hawk.* 87.) But if it be not on fresh pursuit, the officer, it seems, should have a magistrate's warrant. (1 *East's P. C.* 324.)

An officer or party who gains admittance into the house, under the above circumstances, may, if necessary to regain his liberty, break open the outer door. (*Id.* See *Pugh v. Griffiths*, 7 *Ad. & Ell.* 827.)

As to how far outer doors may be broken open *under a warrant*, see *post*, tit. "*Warrant*," Vol. V., where the law as to breaking open doors is more fully treated of.

If a felony be committed, or a felon fly from justice, or a dangerous wound be given, it is the duty of every man to use his best endeavours for preventing an escape, and if in the pursuit the felon be killed where he cannot be otherwise overtaken, the homicide is justifiable. This rule is not confined to those who are present so as to have ocular proof of the fact, or to those who first come to the knowledge of it, for if in these cases fresh pursuit be made, all who join in aid of those who began the pursuit are under the same protection of the law. But if he may be taken in any case without such severity, it is, at least, manslaughter in him who kills, and the jury ought to inquire whether it were done of necessity or not. (1 *East, P. C.* 298; 3 *Inst.* 221; *Fost.* 271; *Hale, P. C.* 488; 1 *Hawk. P. C.* c. 38, s. 11.) But supposing a

As to homicide in effecting arrest.

5. Manner of. felony to have been actually committed, but not by the person suspected and pursued, the law does not afford the same indemnity to such as of their own accord, or upon mistaken information that a felony had been committed, engage in the pursuit, how probable soever the suspicion may be; but constables acting on reasonable suspicions of felony are justified in proceeding to such extremities when a private person may not be, (*East P. C.* 300; 2 *Hale*, 85,) but the constable must know, or at least have reasonable ground for suspecting, that a felony has been committed; for a constable was convicted of shooting at a man, with intent to do him some grievous bodily harm, whom he saw carrying wood out of a copse which he had been employed to watch, and who, by running away, would have escaped if he had not fired, for unless the man had been previously summarily convicted for the same offence he had not committed a felony, and the constable was not aware that he had been so convicted. The conviction of the constable was affirmed by the Court of Crown Cases Reserved. (*Dodson's case*, 2 *Den. C. C.* 35; 20 *L. J. M. C.* 57; see *Reg. v. Phelps*, *Car. & M.* 180.)

VI. What is to be done after the Arrest.

By constables.

When a constable arrests a party for treason or felony, he must take him before a magistrate to be examined as soon as he reasonably can. (*Com. Dig. Imprisonment*, H. 4; *Wright v. Court*, 4 *B. & C.* 596; 6 *D. & R.* 623, *S. C.*) Where a constable detained a party three days, in order that the person, whose goods had been stolen, might have an opportunity of collecting his witnesses and bring them to prove the felony, it was held he was not justified in so doing. (*Wright v. Court*, 4 *B. & C.* 596; 6 *D. & R.* 623.)

Though a constable may perhaps justify removing a person who is interrupting the service in a church from the church, and detaining him until the service is ended, he cannot justify taking him to an inn and detaining him there for an hour after the service is over, and then allowing him to go, upon promising to attend before a neighbouring magistrate the next morning, where the interruption of the service was not malicious and of purpose, so as to be within the 1 *M. st.* 2 & 3 or 1 *W. & M. c.* 8. (*Williams v. Glenister*, 2 *B. & C.* 699; see also *Wooding v. Ozley*, 9 *C. & P.* 1; *Wheeler v. Whiting*, 9 *C. & P.* 269; *Shaw v. Chairitie*, 3 *C. & K.* 21; *ante*, 299.)

If a statute requires that the prisoner should be forthwith taken before a justice, the person apprehending must not take him to his house or to any other place before going before the magistrate, under any pretext. (*Morris v. Wise*, 2 *F. & F.* 51; *R. v. Curran*, 3 *C. & P.* 397; *Hannay v. Boulbee*, 4 *C. & P.* 350.)

Though the arrest be at night, or at any other time, when it is not possible or seasonable to take before a magistrate, it seems a constable is justified in a case of treason or felony in taking the party out of his house to a gaol or other place for safe custody, until he can take him before a magistrate. (*Davis v. Russell*, 5 *Bing.* 354.)

If the party resist his apprehension or attempt to escape, it seems the constable may handcuff him, or use any other reasonable and necessary means to prevent his escaping, otherwise not. (*Wright v. Court*, 4 *B. & C.* 596; 6 *D. & R.* 623.)

The question whether the mode of detainer is reasonable is for the jury, and on board ship the putting in irons may be reasonable. (*Broughton v. Jackson*, 18 *Q. B.* 378; 21 *L. J. Q. B.* 265.)

So if there be danger of a present rescue, or if the party be sick, then the constable may keep him in a house or other place of security until such time as it may be reasonable to take him before a magistrate. (2 *Hale*, 120.)

And see further as to rescue, *post*, "Escape," Vol. II.; "Rescue," Vol. V.

And a constable may *ex officio* arrest a breaker of the peace in his view, and keep him in his house or in the stocks till he can bring him before a justice, and a bystander may justify ordering him to do so. (1 *Hale P. C.* 587; *Derecourt v. Corbishley*, 5 *E. & B.* 188; 24 *L. J. Q. B.* 313.)

If the constable or his watch hath arrested affrayers, or persons drinking in an alehouse disorderly at an unseasonable time of night, he may put the persons in the stocks, or in a prison, if there be one in the vill, till the heat of their passion or intemperance is over, though he deliver them afterwards, or till he can bring them before a justice. (2 *Hale*, 95.)

Where an arrest has been made without a warrant the constables may in some cases take the party's word for his appearance before a magistrate; and this is frequently done where the charge is for an assault of a trifling nature, and the defendant is of good repute, and there is no probability of his absconding. (See *Hardy v. Murphy*, 1 *Esp.* 295; *Arrowsmith v. Le Mesurier*, 2 *N. R.* 211; 1 *Ch. C. L.* 59.) As to how this may be done where there is a warrant, see *post*, "Warrant," Vol. V.

When the prisoner is brought before the magistrate, he is still considered to be in the custody of the officer, until he has been either discharged, bailed, or committed to prison. (2 *Hale*, 120.)

The common law gives no authority to a justice of the peace to detain a person suspected but for a reasonable time till he may be examined. (*Com. Dig. Imp. H.* 5; *Wright v. Court*, 4 *B. & C.* 598; *Davis v. Capper*, 10 *B. & C.* 28.) What is a reasonable time depends upon the circumstances of the case. (*Davis v. Capper*, *ubi sup.*). And if when a prisoner is brought before a magistrate he cannot attend to him for some reason, he should not interfere, but let the constable take him before some other magistrate. He should either say, "I can't attend to it now, or examine into the case," but he has no right without examining the man to send him back to prison to await his leisure. (*Edwards v. Ferris*, 7 *C. & P.* 542.)

Nor has a justice any right in order to compel a man to settle a case which has been brought before him, to tell a constable to take him out and see if he and the complainant could settle the matter, at the same time telling the defendant if he did not he would proceed to commit him under a statute. And the justice who does so is liable in an action for false imprisonment. (*Bridgett v. Coyney*, 1 *M. & Ry.* 211.)

As to the general powers of justices to remand prisoners brought before them, see 11 & 12 *Vict. cc.* 42-43, and *tit.* "Warrant," *post*, Vol. V.

It seems a *gaoler* will be protected in receiving a party into custody, although it appear he was wrongfully taken; because it is his duty to receive persons brought by a proper officer, without inquiring into the legality of the arrest. (*Sir T. Jones*, 214; *Brandling v. Kent*, 1 *T. R.* 60; *Hobbs v. Branscomb*, 3 *Camp.* 420. See further, *post*, "Gaols," Vol. II.)

When a *private person* has apprehended another for treason or felony, he should deliver him over to a constable, or carry him before a magistrate or to any gaol in the county. (1 *Hale*, 589; 2 *Hale*, 77; 2 *Hawk. c.* 13, s. 7; *R. v. Hunt*, 1 *Moo. C. C.* 93; *Com. Dig. Imprisonment*, H. 4.) It is rarely the case that a private person carries the party to gaol. He cannot apprehend and discharge the party at his own pleasure; except perhaps in the case of an affray or breach of the peace, when it seems he may detain the offender until his passion is over, or till there be no opportunity for his doing the threatened mischief. (2 *Hawk. c.* 13, s. 8; see *R. v. Curran*, 3 *C. & P.* 397; 5 *East*, 294.) Neither can he, it seems, apprehend and deliver the party over to a constable

6. What to be done after.

By Justices.

By gaolers.

By private persons.

6. *What to be done after.* only, but he must follow up the charge by attending before the magistrate, and then only he ceases to be an actor. The law gives no authority even to a justice to detain a person suspected, but for *reasonable* time till he may be examined. (*Com. Dig. Imprisonment*, H. 5; *Davis v. Capper*, 10 B. & C. 28; 5 *Man. & R.* 53.)

Escapes.

As to escapes, see *post*, Vol. II. tit. "*Escape*."

If a party imprisoned obtain his release by undue means, as by fraudulently writing a letter in the name of a magistrate authorising his discharge, he may be indicted for forgery at common law. (*R. v. Harris*, 6 Q. & P. 129.)

Arsenic.

[14 & 15 Vict. c. 13.]

- I. *Penalties for Sale of Arsenic*, 306.
- II. *Books to be kept by Seller, and Entries made*, 306.
- III. *Purchaser must not be unknown*, 307.
- IV. *Arsenic to be Coloured*, 307.
- V. *Exceptions*, 307.

I. Penalties for Sale of Arsenic.

THE unrestricted sale of arsenic being found to facilitate the commission of crime, the 14 & 15 Vict. c. 12, was passed, by which the seller of such commodity is required to ascertain the name and certain particulars of the purchaser, and to colour the article before sale; and the purchaser is required to give him true answers to his inquiries. By sect. 4, it is enacted, that "If any person shall sell any arsenic save as authorised by that Act, or on any sale of arsenic, shall deliver the same without having made and signed the entries required by that Act on such sale, or without having obtained the signature of the purchaser to such entries as are required by that Act, or if any person purchasing any arsenic shall give any false information to the person selling the same in relation to the particulars which such last-mentioned person is hereby authorised to inquire into of such purchaser, or if any person shall sign his name as aforesaid as a witness to a sale of arsenic to a person unknown to the person so signing as a witness, every person so offending shall for every such offence, upon a summary conviction for the same before two justices of the peace in England or Ireland, or before two justices of the peace or the sheriff in Scotland, be liable to a penalty not exceeding twenty pounds."

Fine for selling arsenic contrary to the Act.

For giving false information to seller.

For signing name as a witness contrary to the Act.

II. Books to be kept by Seller, and Entries made.

What inquiries and entries to be made by seller and purchaser.

By the 1st section, "Every person who shall sell arsenic shall forthwith, and before the delivery of such arsenic to the purchaser, enter or cause to be entered in a fair and regular manner in a book or books to be kept by such person for that purpose in the form set forth to the schedule to that Act, or to the like effect, a statement of such sale with

the quantity of arsenic so sold, and the purpose for which such arsenic is required or stated to be required, and the day of the month and year of the sale, and the name, place of abode, and condition or occupation of the purchaser, into all which circumstances the person selling such arsenic is hereby required and authorised to inquire of the purchaser before the delivery to such purchaser of the arsenic sold, and such entries shall in every case be signed by the person making the same, and shall also be signed by the purchaser unless such purchaser profess to be unable to write, (in which case the person making the entries hereby required shall add to the particulars to be entered in relation to such sale the words 'cannot write,') and where a witness is hereby required of the sale, shall also be signed by such witness together with his place of abode."

5. Exceptions.

III. Purchaser must not be unknown.

By the 2nd section, "No person shall sell arsenic to any person who is unknown to the person selling such arsenic, unless the sale be made in the presence of a witness who is known to the person selling the arsenic, and to whom the purchaser is known, and who signs his name together with his place of abode, to such entries before the delivery of the arsenic to the purchaser, and no person shall sell arsenic to any person other than a person of full age."

Sale to an unknown person must be in presence of a witness.

Sale must be to a person of full age.

IV. Arsenic to be Coloured.

By sect. 3, the arsenic is required to be coloured. "No person shall sell any arsenic unless the same be before the sale thereof mixed with soot or indigo in the proportion of one ounce of soot, or half an ounce of indigo at the least to one pound of the arsenic, and so in proportion for any greater or less quantity: provided always, that where such arsenic is stated by the purchaser to be required not for use in agriculture but for some other purpose for which such admixture would, according to the representation of the purchaser, render it unfit, such arsenic may be sold without such admixture in a quantity of not less than ten pounds at any one time."

When arsenic must be coloured.

V. Exceptions.

The Act is not to restrict the sale for the purposes of the medical profession or drug trade. By sect. 5, it is provided, that the Act "shall not extend to the sale of arsenic when the same forms part of the ingredients of any medicine required to be made up or compounded according to the prescription of a legally qualified medical practitioner or a member of the medical profession, or to the sale of arsenic by wholesale to retail dealers upon orders in writing in the ordinary course of wholesale dealing."

Not to apply to sales for medical purpose, or wholesale dealing.

The word arsenic in the Act, shall include arsenious acid, and the arsenites argenic acid, and the arseniates, and all other colourless poisonous preparations of arsenic.

Interpretation of the term arsenic.

5. *Exceptions.*

The Act then gives the below form of entry in the Schedule.

Day of Sale.	Name and Surname of Purchaser.	Purchaser's Place of Abode.	Condition or Occupation.	Quantity of Arsenic Sold.	Purpose for which required.
Sept. 1861	John Thomas	Hendon, Elm Farm	Farm labourer	5 lbs.	To steep wheat

Purchaser's signature, John Thomas (cannot write).
 Witness, James Stone, Grove Farm, Hendon.
 Seller's signature, George Wood.

Assault and Battery in General.

AS to aggravated assaults in particular cases, see *post*.

- I. *What is an Assault*, 308.
- II. *What a Battery*, 312.
- III. *In what Cases justified or excused*, 312.
- IV. *Proceedings by Indictment*, 315.
- V. *Summary Proceedings before Justices*, 317.
- VI. *Forms*, 320.

I. What is an Assault.

What an assault.

An assault, (*assultus*, from the French *assayler*), is an attempt or offer, with force and violence, to do a corporal hurt to another, whether from malice or wantonness; as by striking at him with or without a weapon, though the party striking misses his aim; so drawing a sword, throwing a bottle or glass, with intent to wound or strike, presenting a loaded gun or pistol at a person within the distance to which the gun or pistol will carry, or pointing a pitchfork at a person standing within reach; holding up one's fist at him, in a threatening or insulting manner, or with such other circumstances as denote at the time an intention (coupled with a present ability) of using actual violence against his person, will amount to an assault; (1 *Hawk.* c. 15, s. 1, 2; *Reg. v. Light*, 1 D. & B. 332, S. C.; 27 L. J. M. C. 1; *Coward v. Baddeley*, 4 H. & N. 478; 28 L. J. Ex. 260;) but the mere passive obstruction of a person's progress, as if a person by simply placing himself passively like a door or a wall in a person's way, obstructs his entrance into a room, is not an assault; (*Innes v. Wylie*, 1 Car. & K. 257;) nor is it an imprisonment. (*Bird v. Jones*, 7 Q. B. 742; 15 L. J. Q. B. 82.) It has been said that the presenting a gun or pistol at a person within the distance to which it will carry, though in fact not loaded, thereby putting the person at whom it was presented in fear and alarm, was an assault; (1 *Hawk.* c. 15; *R. v. St. George*, 9 C. & P. 483;) but other and later authorities (*Blake v. Barnard*, 9 C. & P. 626) have held that if it be not loaded, or if loaded, it could not possibly go off by reason of improper priming or damp powder, it would be no assault to present it and pull the trigger; (*R. v. Baker*, 1 C. & K. 254; *R. v. James*, 1 C. & K. 530;) but if a blow aimed or a loaded gun presented is so near

What not an assault.

taking effect that in another moment or two it would probably have done so, it would amount to an assault. (*Stephens v. Myers*, 4 C. & P. 349; *Osborn v. Veitch*, 1 F. & F. 317.) If it be loaded, and the only reason of a loaded gun so presented not going off is that it was on half-cock, that would be an assault, for the cocking of a gun is an instantaneous act. (*Osborn v. Veitch*, 1 F. & F. 317.) The reason of the distinction probably is that in the latter case it can hardly be denied that there is both the intention and a present ability, while in the former the circumstances do not sufficiently denote the intention, nor can it be said that there is a present ability.

From hence it clearly follows that one charged with an assault and battery may be found guilty of the assault, and yet acquitted of the battery; but every battery includes an assault: therefore on an indictment for assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery it is sufficient. (1 *Hawk. c.* 15, s. 1.)

Every unlawful imprisonment includes an assault. (1 *Hawk. c.* 15, s. 7; 4 *Bla. Com.* 218.)

Mere words will not amount to an assault, though perhaps they may in some cases serve to explain a doubtful action. (1 *Hawk. c.* 15, s. 1; *Bull. N. P.* 15; *Tuberville v. Savage*, 1 *Mod.* 3; *Blake v. Barnard*, 9 C. & P. 626; see *Reg. v. Light*, *ubi sup.*; *Read v. Coker*, 13 C. B. 850; 22 L. J. C. P. 201; *Coward v. Baddeley*, 4 H. & N. 478; 23 L. J. Ex. 260.)

If a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault. (*Com. Dig.* "Battery" (C).) But if A. advances in a threatening attitude with his fists clenched towards B., with an intention of striking him, so that his blow would have almost immediately reached B. if he had not been stopped by a third person: this would be an assault in point of law, though at the particular moment when A. was stopped, he was not near enough for his blow to take effect. (*Stephens v. Myers*, 4 C. & P. 349.)

To collect a number of workmen round a person who tuck up their sleeves and aprons and threaten to break his neck, if he did not go out of the place, through fear of whom he did go out, amounts to an assault. (*Read v. Coker*, 13 C. B. 850; 22 L. J. C. P. 201.) There is the intention and present ability and a threat of violence causing fear.

So riding after a person, and obliging him to run away into a garden to avoid being beaten is an assault. (*Martin v. Shoppee*, 3 C. & P. 373.)

Any man wantonly doing an act of which the direct consequence is that another person is injured, is an assault at common law, though a third body is interposed between the person doing the act and the person injured. Thus to drive a carriage against another carriage in which a person is sitting, or to throw over a chair on which a person is sitting, whereby the person in the carriage or on the chair, as the case may be, is injured, is an assault. (*Hopper v. Reeve*, 7 *Taunt.* 698.) So by encouraging a dog to bite, or by wantonly riding over a person with a horse, an assault is committed. (1 *Russ. on Cr.* 1021, ed. 4; *Deacon, C. D.* 62; *Bull. N. P.* 16.) And by statute (24 & 25 *Vict. c.* 100, s. 35), "Whosoever having the charge of any carriage or vehicle shall, by wanton or furious driving, or racing, or other wilful misconduct, or by wilful neglect do or cause to be done, any bodily harm to any person whatsoever, shall be guilty of a misdemeanour." See further *post*, 312.

In order to constitute an assault other than one which involves a breach of the peace, the act must be done against the will, and without the consent of the person alleged to be assaulted. Mere absence of resistance is but evidence of consent, and although in ordinary cases it is cogent evidence, yet from the relative ages, positions, characters, or personal strength of the parties, its value may be diminished, or even amount to no more than mere submission. There is a great difference between submission and consent; consent involves submission, but it

1. What an Assault.

Where third body interposed.

By statute.

Against the will.

1. *What an Assault.*

by no means follows that mere submission involves consent. (*R. v. Day*, 9 C. & P. 722, per *Coleridge*, J.) Thus the submission of a child, when in the power of a strong man, and probably acted upon by fear, does not amount to a consent so as to preclude the idea of an assault in law. (*R. v. Day*, *ubi sup.*) Nor can the non-resistance of a female scholar of thirteen years to acts of indecency on the part of the master, whose wife kept the school; (*R. v. Nicholl*, R. & R. C. C. 130;) or of a female patient suffering from fits, to a medical man, who on pretence of treating her medically unnecessarily stripped off all her clothes; (*R. v. Rosinski*, 1 Moo. C. C. 19;) or of a female patient of fourteen years of age suffering from suppressed menstruation, under the belief that he was treating her medically to a medical man's having connection with her, (*Reg. v. Case*, 1 Den. C. C. 580; 19 L. J. M. C. 174,) be said to amount to a consent, which will prevent the commission of an assault. But without other attending circumstances mere tenderness of age, except helpless infancy, (*R. v. March*, 1 C. & K. 496,) does not incapacitate from giving consent. Thus it is not an assault to have connection with a girl between the age of ten and twelve years (*R. v. Martin*, 2 Moo. C. C. 123; *R. v. Meredith*, 8 Car. & P. 589) if she consent, nor even if she be only nine, and consent; (*Reg. v. Read*, 1 Den. C. C. 377; 18 L. J. M. C. 88;) but in the latter case the boys who had connection with the girl were not much older than she was.

On an indictment for assaulting a female child with intent to abuse and carnally to know her, the jury found that the prisoner assaulted the child with intent to abuse her, but negatived the intention charged carnally to know her. *Holroyd*, J., held that the averment of intention was divisible, and sentenced the prisoner to twelve months' imprisonment. (*R. v. Dawson*, 3 Stark. 62, and see *R. v. Evans*, *id.* 35.)

If a woman voluntarily take cantharides in rum in ignorance of its properties given to her by a person with the intention to excite a sensual desire, and the woman is made sick and ill, it is not an assault at common law; (*Reg. v. Hanson*, 2 C. & K. 912; *R. v. Walkden*, 1 Cox Cr. Cas. 282;) but this case is now provided for by the 24 & 25 Vict. c. 100, s. 24. (See *R. v. Wilkins*, L. & C. 89; 31 L. J. M. C. 72; see "*Malicious Injuries to Persons*," Vol. III.)

To take a new born child from the mother under the pretence of taking it to an institution to be nursed, and put it into a bag, and hang the bag with the child in it by the way-side is an assault. (*Reg. v. March*, 1 C. & K. 496.)

To support an indictment for an assault, such an assault must be shown as could not be justified, if an action were brought for it, and leave and license or other defence pleaded. (*Reg. v. Meredith*, 8 Car. & P. 589.) But a person cannot give another leave to beat or strike him, so as to prevent a voluntary fight being an assault, for such a consent is void and illegal, being in breach of the peace. (*Matthew v. Ollerton*, Comb. 218; *Bull. N. P.* 16.)

Where moderate correction is allowed to be exercised by persons occupying certain positions towards the corrected person any excess in the correction administered, or any improper mode of exercising it, constitutes an assault, *post*, 314. Thus at a time when a master of a union was deemed to be justified in moderately correcting by corporal punishment any inmates, the infliction of corporal punishment on the naked person of a female pauper, though not excessive, was placed by reason of its indecency on the footing of unreasonable correction; (*Reg. v. Miles*, 6 Jur. 243;) but now no master of a union is justified in using corporal punishment at all. (4 & 5 Will. IV. c. 76, s. 93.) As to the ill-treatment of a lunatic, &c. (*R. v. Rundle*, Dears. C. C. 482; 24 L. J. M. C. 129, *post*, 311.)

So it is an assault in parish officers to cut off the hair of a pauper in the poor-house by force against her will. (*Forde v. Skinner*, 4 C. & P. 239.)

Correction by
physical force.

Mere nonfeasance, or in other words a mere omission to do an act whereby an injury is caused to a person, cannot in general be construed to be an assault—at all events, unless there is a clear duty raised by law on the part of the person omitting to do the act towards the other party. Thus the withholding of proper food or warmth from a servant is not indictable at common law, unless the servant is a child of tender years, and under the dominion and control of the defendant, in which latter case the law raises a duty in the master or mistress; but to expose a female servant to the inclemency of the weather against her will is an act of commission in the nature of an assault, for which the defendant may be liable of whatever age the servant was. (*R. v. Ridley*, 2 Camp. 650.)

1. *What an Assault.*

Acts of omission or nonfeasance.

Breach of duty towards servants and others.

By statute.

By statute, however, (24 & 25 Vict. c. 100, s. 26), "Whosoever being legally liable, either as master or mistress, to provide for any apprentice, or servant, necessary food, clothing, or lodging, shall wilfully, and without lawful excuse, refuse or neglect to provide the same, or shall unlawfully and maliciously do, or cause to be done, any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been, or shall be likely to be, permanently injured, shall be guilty of a misdemeanour."

And before this statute the relationship of master and servant created a duty at common law, sufficient to render an act of omission to supply requisite food, &c., an indictable offence.

Breach of duty towards relations.

The mere relationship of brother to brother is not sufficient to raise a duty to supply necessary food and warmth, and, therefore, the neglect to supply a bed-ridden idiot brother with sufficient warmth or covering is not an indictable offence, nor under these circumstances was it an assault to keep him confined in a dark room; (*R. v. Smith*, 2 C. & P. 449;) but with respect to lunatics, the 16 & 17 Vict. c. 96, s. 9, makes it a misdemeanour for any person taking or having the care or charge of a lunatic, in any way wilfully to neglect him, and this extends to a brother who has voluntarily undertaken the care of his lunatic brother; (*R. v. Porter*, L. & C. 394; 33 L. J. M. C. 126;) but this statute does not apply where the relationship of husband and wife exists, for the husband takes charge of his lunatic wife as wife, not as lunatic. (*Reg. v. Rundle*, 1 Dears. C. C. 486; 24 L. J. M. C. 129.) But the relationship of parent and child, or perhaps an obligation raised by a pecuniary consideration, would be sufficient to render the omission an indictable offence, as a devise or bequest on condition of rendering such support, (see *R. v. Smith*, *ubi sup.*), or of guardian and ward, or parent and child, is sufficient to raise such a duty. To render a parent liable for neglect of a child at common law, the child must be of tender years and unable to provide for itself. The parent must have a present means or ability to support the child; (the possibility of being able to obtain such relief is not sufficient); and by the neglect of such duty the child has suffered a serious injury. (*R. v. Ridley*, *ubi sup.*; *R. v. Chandler*, Dears. C. C. 453; 24 L. J. M. C. 109; *R. v. Hogan*, 2 Den. C. C. 277; 20 L. J. M. C. 219; *R. v. Philpott*, Dears. C. C. 145; 22 L. J. M. C. 113.) The mere leaving of a child in a highway without ill-usage will not support an indictment. (*R. v. Cooper*, 1 Den. C. C. 459; 18 L. J. M. C. 168.) Its health must have been seriously injured. (*R. v. Hogan*, *ubi sup.*; *R. v. Philpott*, *ubi sup.*) An opportunity of applying to a relieving officer of the union, from whom the mother would have received adequate relief on application, is not a sufficient proof of her having present means; (*R. v. Chandler*, *ubi sup.*;) but by statute, (24 & 25 Vict. c. 100, s. 27), "Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been, or shall be likely to be, permanently injured, shall be guilty of a misdemeanour."

Parent and child.

Ability to support.

By statute.

2. What a Battery, &c.

What a battery.

Battery (from the Saxon *batte*, a club, or *beaten*, to beat, from whence cometh also the word *battle*,) seemeth to be, when any injury whatsoever, be it ever so small, is actually done to the person of a man in an angry, or revengeful, or rude, or insolent manner, as by spitting in his face, or throwing water on him, (*Pursell v. Horn*, 8 *Ad. & Ell.* 602,) or any way touching him in anger, or violently jostling him out of the way, and the like. (1 *Hawk. c.* 15, s. 2; 1 *Russ. on Crimes*, 1020, ed. 4; *Rawlings v. Till*, 3 *M. & W.* 28.) The touch or hurt must be with a hostile intention, and therefore, a touch given by a constable's staff for the purpose of engaging a person's attention only is not a battery. (*Wiffin v. Kennard*, 2 *N. R.* 471; *Coward v. Baddeley*, 4 *H. & N.* 478; 28 *L. J. Ex.* 260.)

The injury need not be effected directly by the *hand* of the party, see *ante*, p. 309.

Where third body interposed.

Neither need the assault and battery be immediate—as where one pushes a drunken man against another, and thereby hurts him, this is an assault and battery; otherwise, if the real intention was to assist the drunken man, or to prevent him from going along the street without help, and in so doing a hurt ensued. (*Short v. Lovejoy*, *Bull. N. P.* 16.) So in the case of a lighted squib thrown in a market-place from one to another to avoid injury till it struck a party, the first thrower would be guilty of an assault and battery. (*Scott v. Shepherd*, 2 *Bla. Rep.* 892.)

Striking a horse whereon a person is riding and whereby he is thrown is a battery on him; (*Dodwell v. Burford*, 1 *Mod.* 24; *W. Jones*, 444;) and the rider is justified in striking a person who wrongfully seizes the reins of his horse, and in using all the violence necessary to make him loose his hold. (*Rowe v. Hawkins*, 1 *F. & F.* 91.)

What a wounding.

A *wounding* is where the violence is such that the flesh is opened; a mere scratch may constitute a wounding. As to what is a wounding within the 24 & 25 *Vict. c.* 97, s. 40, see *post*, “*Malicious Injuries to Property*,” Vol. III.; see *Reg. v. Bullock*, 37 *L. J. M. C.* 47; 1 *L. R. C. C.* 115; and as to a wounding within 24 & 25 *Vict. c.* 100, see “*Malicious Injuries to the Person*,” *post*, Vol. III.

It has been said that an imprisonment necessarily includes a battery; (*Onley v. Flower*, 2 *Selw. N. P.* “*Imprisonment*,” I.; *B. N. P.* 22; *Bird v. Jones*, 7 *Q. B.* 742; 15 *L. J. Q. B.*;) but see *Emmett v. Lye*, 1 *New R.* 255.

III. In what cases justified or excused.

S. 1st-Defence.

Self-Defence.—Even a maihem is justifiable if committed in a party's own defence. (*Dance v. Lucy*, 1 *Sid.* 246; 1 *Roll. Rep.* 19; *Cockroft v. Smith*, 2 *Salk.* 642; 1 *Ld. Raym.* 177, *S. C.*; *Anon.* 3 *Salk.* 46.) But a person struck has merely a right to *defend* himself, and strike a blow in his defence, but he has no right to revenge himself; and if, when all the danger is past, he strikes a blow not necessary, he commits an assault and battery. (*Reg. v. Driscoll*, 1 *Car. & M.* 214; *R. v. Milton*, *M. & M.* 107.) And in no case should the battery be more than is necessary for self-defence. (*Bull. N. P.* 18.)

The mere offer of a person to strike another is sufficient to justify the latter's striking him; he need not stay till the other has actually struck him. (*Bull. N. P.* 18; 2 *Roll. Abr.* 547, *l.* 37.)

It was resolved, in *Frances v. Ley*, (*Crò. Jac.* 367,) that when a person is assaulted or beaten in a church or churchyard, it is not lawful for him to return blows in his own defence, as he may elsewhere. (And see 1 *Hawk. c.* 28, s. 28.)

So one who is guilty of the offence cannot excuse himself by showing

that the person struck by him made the first assault, if that assault was justifiable. (1 *Hawk. c. 15, s. 4*; *Com. Dig. Pleader, 3 M. 15*; *Leeverd v. Basilee, 1 Salk. 407*; 1 *Ld. Raym. 62, S. C.*; *Carth. 280*; *Bird v. Jones, 7 Q. B. 742*; 15 *L. J. Q. B. 82*.)

3. When Justifiable.

Defence of Relations, Servants, &c.—A husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant, and a servant in defence of his master. (2 *Roll. Abr. 546, D.*; 1 *Hawk. c. 28, ss. 23, 24*; *Tickell v. Road, Loft, 215*.)

Defence of relations, servants, &c.

But in all these cases the battery must be such only as was necessary to the defence of the party or his relation; for if it were excessive, if it were greater than was necessary for mere defence, the prior assault will be no justification. (*Bull. N. P. 18*; *Weaver v. Bush, 8 T. R. 78*; 1 *East's P. C. 406*.) Thus a man cannot justify a maihem for every assault—as if A. strike B., B. cannot justify drawing his sword and cutting off A.'s hand. (*Per cur. Cooke v. Beal, 1 Ld. Raym. 177*.)

When a person does not stand in either of these relations he cannot justify an interference *in behalf* of the party injured; but merely as an indifferent person to preserve the peace. (*Post, 314*.)

Therefore, a servant cannot justify beating another in defence of his master's son, though he were even commanded to do so by the master, because he is not a servant to the son; and for the like reason a tenant may not beat another in defence of his landlord. (1 *Hawk. c. 28, s. 24*.)

Defence of Property.—A party may justify a battery by showing that he committed it in defence of his possession; as for instance, to remove the prosecutor out of his close or house; (*Hayling v. Okey, 8 Exch. 53*; 22 *L. J. Ex. 139*; *Lutw. 1435*; *Hard. 358*;) or to remove a servant, who at night is so misconducting himself as to disturb the peace of the household; (*Shaw v. Chairitie, 3 C. & K. 21*;) or to remove a person out of a public-house, if the party be misconducting himself; (*Howell v. Jackson, 6 C. & P. 723*; *Moriarty v. Brooks, Id. 684*; *Webster v. Watts, 11 Q. B. 311*; 13 *L. J. Q. B. 73*; *Ingle v. Bell, 1 M. & W.*; *Wheeler v. Whiting, 9 C. & P. 265*;) or to prevent him from entering the defendant's close or house; (2 *Roll. Abr. 548, l. 25*; *Polkinghorn v. Wright, 8 Q. B. 197*; *Ingle v. Bell*; *Holmes v. Bagge, 1 E. & B. 782*; 22 *L. J. Q. B. 301*;) to restrain him from taking or destroying his goods, &c.; (2 *Roll. Abr. 549, l. 7*;) from taking or rescuing cattle, &c., in his custody upon a distress; (*Id. l. 10*; 2 *Bro. Ent. 260*;) or to re-take personal property improperly detained or taken away; (*Blades v. Higgs, 12 C. B. N. S. 501*; 30 *L. J. C. P. 347, S. C.*; *Scott, N. S.*; *Weaver v. Bush, 8 T. R. 78*; 2 *Roll. Rep. 56, 208*; *Rex v. Milton, M. & M. 107*;) or the like.

Defence of property.

In the case of a trespass in law, merely *without actual force*, the owner of the close, &c., must first *request* the trespasser to depart before he can justify laying his hands on him for the purpose of removing him; and even if he refuse, he can only justify so much force as is necessary to remove him. (*Weaver v. Bush, 8 T. R. 78*; 2 *Roll. Abr. 548, l. 35, 45*; *Green v. Goddard, 2 Salk. 641*; *Skin. 387*.) But if the trespasser use *force*, then the owner may oppose force to force; (*Green v. Goddard, 2 Salk. 641*; *Weaver v. Bush, 8 T. R. 78*; *Harvey v. Bridges, 14 M. & W. 437*; *Tullay v. Reed, 1 C. & P. 6*;) and in such a case, if he be assaulted or beaten, he may justify even a wounding or maihem, in self-defence, as above mentioned. In answer to a justification in defence of his possession, it may be shown that the battery was excessive; (*Skin. 387*; *Lutw. 1436*; *R. v. Milton, M. & M. 107*;) or that the party assaulted, or some one by whose authority he acted, had a right of way or other easement over the close, or the like. (*Bird v.*

3. When Justifiable.

Jones, 7 Q. B. 742; 15 L. J. Q. B.; *Holmes v. Bagge*, 1 E. & B. 782; 22 L. J. Q. B. 301.)

Moderate correction.

Moderate correction at common law.—A parent may, in a reasonable manner, chastize his child, or a master his servant, or a schoolmaster his scholar, or a gaoler his prisoner; (1 *Hawk.* c. 28, s. 23; c. 62, s. 2;) and so also the captain of a ship could order any of the crew who have mutinously or violently misconducted themselves to be moderately and properly corrected. (*Lamb v. Burnett*, 1 Cr. & J. 295; *Noden v. Johnson*, 16 Q. B. 218; 20 L. J. Q. B. 95.)

So might a military officer order a correction for disobedience of orders, (*Lane v. Hegberg*, Bull. N. P. 19; *Hannaford v. Hunn*, 2 C. & P. 148,) but he must in no case be guilty of any unnecessary injury to the offender, or he would be liable. (*Wall v. Macnamara*, 1 T. R. 536; *Swinton v. Molley*, 1 T. R. 537.)

And if it exceeds the bounds of moderation either in the manner, the instrument, or the quantity of punishment, it is an assault, and this is a question for the jury. (*Broughton v. Jackson*, 18 Q. B. 381; 21 L. J. Q. B. 265. See *ante*, 310; *post*, tit. "Servants," Vol. V.)

Under authority of law.

Under Authority of Law.—It is a sufficient justification to show that the assault was done under the authority of the law, with or without legal process, no greater assault being committed than was necessary. (See 2 *Roll. Abr.* 546; 2 *Stra.* 1049.) But if a man without authority attempt to arrest another illegally, it is a breach of the peace, and any other person may lawfully interfere to prevent it, doing no more than is necessary for that purpose. (*R. v. Osmer*, 5 *East*, 304.)

A person may, it seems, if it be necessary to do so, lay hands on another in order to serve him with process. (*Harrison v. Hodgson*, 10 B. & C. 445.)

So a person may lay hands upon another to prevent him from fighting or committing a breach of the peace, committing no unnecessary violence, (*Noden v. Johnson*, 16 Q. B. 218; 20 L. J. Q. B. 95; *Hayling v. Okey*, 8 *Exch.* 531; 22 L. J. Ex. 139; *Com. Dig. Pleader*, 3 M. 16; *Burfoot v. Reynolds*, 2 *Stra.* 953; see tit. "Affray," "Arrest," (*without warrant*.) *ante*, p. 298,) or to prevent him from rescuing goods taken in execution, (3 *Lev.* 113,) or the like. (*R. v. Milton*, M. & M. 107.)

Churchwardens and private persons are justified in gently laying their hands on those who disturb the performance of any part of divine service, and turning them out of the church. (*Gleever v. Hynde*, 1 *Mod.* 168; 1 *Hawk.* c. 28, s. 29; and see *Williams v. Glenister*, 2 B. & C. 699; 4 D. & R. 217, S. C.; *Burton v. Henson*, 10 M. & W. 105.)

A coroner holding an inquest may, if he deems privacy desirable for the ends of justice, or decency, or otherwise, exclude all persons or particular individuals from the room where the inquiry is being held, if after request to leave and refusal to do so may justify the use of necessary force, and the coroner is alone the judge of the propriety of the occasion on which to exclude. (*Garnett v. Ferrand*, 6 B. & C. 611.) And a magistrate, before parties were allowed to plead by attorney as they are now by 11 & 12 Vict. c. 43, s. 12, might turn a person out of a police court who insisted upon appearing and acting as an advocate in a case where advocates are not permitted by the magistrates to be heard. (*Collier v. Hicks*, 2 B. & Ad. 663; see now *Bessell v. Wilson*, 1 E. & B. 489; 22 L. J. M. C. 94.)

Misadventure.

Misadventure.—It is a sufficient excuse or justification to show, that the assault or battery happened by misadventure. Therefore, where, in throwing down skins into a man's yard, the wind took one of them and blew it aside, whereby another man's eye was put out, it was held he could not be indicted for an assault. (*R. v. Gill*, 1 *Str.* 191.) So if,

by a sudden fright, a horse runs away with his rider and runs against a man, it is no assault. (*Gibbons v. Pepper*, 4 Mod. 405.) But if the running away of the horse were occasioned by its being improperly whipped by a third person, such third person would be guilty of an assault; and if death ensued, the offence would amount to manslaughter. (*Bac. Ab. Assault and Battery, B.*) If a soldier hurt another by accident in discharging his gun in exercise, he would not be liable to an indictment. (*Weaver v. Ward*, Hob. 134.)

4. *Proceedings by Indictment.*

There are many cases of accidents which cannot be set up as a defence in an action for a battery, that would certainly be a good defence upon an indictment; in civil cases the accident must have been inevitable and without any fault to operate as an excuse. (2 *Roll. Ab.* 548; *Weaver v. Ward*, Hob. 134; *Moore*, 864, S. C.; 2 *Bla. Rep.* 896; 1 *Stra.* 595; *Wakeman v. Robinson*, 1 *Bing.* 213.)

But in criminal cases, the intention with which the act was done must always be taken into consideration, and it may be taken as a general rule that the same facts which would make killing homicide by misadventure, will be a good defence to an indictment for a battery. See "*Homicide*," Vol. II.

Amicable Contest or Lawful Games.—It is a good justification to prove that the alleged battery was merely an amicable contest; as that he wrestled with the prosecutor for a wager; (*Com. Dig. Pleader*, 3 M. 18; *Bac. Abr. Assault and Battery, B.*) so that it happened by accident while the defendant was engaged in some sport or game, which was neither unlawful nor dangerous, as with swords or the like; and it is probably a good defence that the assault was committed in the exercise of necessary force in order to remove a person disturbing others lawfully playing at a lawful game, e. g. cricket; (*Holmes v. Bagge*, 1 *E. & B.* 786; 22 *L. J. Q. B.* 301;) but prize fights are breaches of the peace and illegal, and, therefore, no mutual consent in the fighters can be a defence. (*R. v. Billingham*, 2 C. & P. 234. See post, "*Fighting*," "*Homicide*," Vol. II.)

Amicable contest.

IV. Proceedings by Indictment; Compounding of; Punishment.

The wrong-doer is subject both to an action at the suit of the party wherein he shall render damages, and also to an indictment at the suit of the queen, wherein he shall be fined according to the heinousness of the offence; (1 *Hawk. c.* 15, s. 4;) and also to summary proceedings before justices, and he is also liable to be bound over to keep the peace if further violence is apprehended. (*R. v. Deny*, 20 *L. J. M. C.* 189.)

Action or indictment for.

The court in which the action is brought will not in general compel the plaintiff to stay the proceedings either in the action or the prosecution by indictment. (*Jones v. Clay*, 1 *Bos. & P.* 191; 2 *Chit. Prac.* 1377, 11th ed.)

But in general the adoption of both proceedings is considered vexatious, and the court will not pass judgment for the assault while an action for the same assault is depending, and although at the time of the defendant's being brought up the prosecutor offer to discontinue the action. (*R. v. Mahon*, 4 *Ad. & Ell.* 575.) The pendency of the indictment may also in some cases induce the jury to give smaller damages in the action.

A party may be prosecuted on one indictment for assaulting two or more persons. (*R. v. Benfield*, 2 *Burr.* 984.)

4. Proceedings by Indictment.

Defences.

Certificate of dismissal or previous conviction before justices.

Whatever is a legal justification or excuse for an assault, may, upon indictment for the assault, be given in evidence under the general issue; (1 *Hawk.* c. 15, s. 3; 1 *East's P. C.* 406;) but a defence by statute should be specially pleaded, unless the statute giving the defence provide for its being received in evidence without being so pleaded. (*Hardy v. King*, 6 C. & P. 427; *R. v. Stanton*, 5 Cox C. C. 324; and see *R. v. Eltrington*, 1 B. & S. 688; 31 L. J. M. C. 15.)

A person against whom a complaint under the 24 & 25 Vict. c. 100, ss. 42, 43, 44, shall have been preferred, who shall have been acquitted and obtained a certificate of dismissal from the justices, or shall have been convicted, and if fined, paid the whole amount of the fine, or if imprisoned suffered the imprisonment awarded, is released by section 25 of the Act from all further proceedings, civil or criminal, for the same cause. This defence must be specially pleaded to entitle the defendant to an acquittal; (*Hardy v. King*, 6 Car. & P. 427;) but if not pleaded and a conviction take place the judge should take into consideration the circumstance of any previous conviction and the previous payment of penalty or suffering of imprisonment. (*R. v. Stanton*, 5 Cox C. C. 324; see *R. v. Eltrington*, 1 B. & S. 688; 31 L. J. M. C. 15.)

If the prosecution arises out of the same state of facts, a lawful previous conviction or certificate of dismissal by justices is equally pleadable in bar of the indictment, though the assault is therein charged as a felonious one, or stated with circumstances of aggravation. (*R. v. Eltrington*, 1 B. & S. 688; 31 L. J. M. C. 14; *R. v. Stanton*, 5 Cox C. C. 324; *R. v. Walker*, 2 Moo. & R. 446.)

Where a complaint of assault was preferred, and the magistrate merely ordered the defendant to enter into his recognizance to keep the peace and pay the costs of the recognizance, it was held that such a decision was not a conviction which could be pleaded in bar to an action for the assault. (*Hartley v. Hindmarsh*, 35 L. J. M. C. 255.) See further as to the conviction or certificate of dismissal on proceedings for assault before justices, *post*, p. 319.

Verdict.

If a judge refuse to take a lawful verdict it is a mis-trial, and a *venire de novo* will be awarded, and, therefore, as upon a count for an assault occasioning actual bodily harm, a verdict of common assault is a lawful one; if the judge will not take that verdict because a common assault was not charged, but tell the jury to re-consider their verdict, and they then find a verdict of guilty, a conviction on the latter finding will be quashed on the ground of a mis-trial. (*R. v. Yeadon*, L. & C. 81; 31 L. J. M. C. 70.) Upon a count alleging an assault, and a wounding and ill-treating, thereby doing actual bodily harm, a verdict of guilty of a common assault justifies a conviction. (*R. v. Oliver*, Bell C. C. 287; 30 L. J. M. C. 12.) And where an indictment contained a count for maliciously inflicting grievous bodily harm, and another count for a common assault, it is sufficient to justify a conviction on the first count that the jury find the prisoner guilty of an aggravated assault, and that the act was done intentionally and without cause, although also without premeditation and under the influence of passion. (*R. v. Sparrow*, Bell C. C. 298; 30 L. J. M. C. 43.)

Compromises.

Compromises for.—Some indictments for misdemeanour may be compromised, but some cannot. Probably it may be safe to say that all offences against the person, though made the subject of a criminal prosecution for misdemeanour, for which the injured party might sue and recover damages in an action, may be compromised—for instance, common assaults committed with reference to a claim to property or otherwise if confined to personal injury—but if the offence is of a public nature it is not legally the subject of a compromise, as if an assault is accompanied with riot, or the obstruction of a public officer in the execution of his duty, or perjury, and the like. (*Keir v. Leeman*, 6 Q. B. 308; 9 Q. B. 371; *Goodall v. Lowndes*, 6 Q. B. 464.)

Punishment for.—The punishment for a common assault is imprisonment, at the discretion of the court, for any term not exceeding one year with or without hard labour, and for any assault occasioning actual bodily harm, at the discretion of the court, penal servitude for the term of three years, or imprisonment for any term not exceeding two years with or without hard labour. (24 & 25 Vict. c. 100, s. 47.) And whenever imprisonment with or without hard labour may be awarded for any indictable offence, under 24 & 25 Vict. c. 100, the imprisonment may be in the common gaol or the house of correction (s. 69), but it is doubtful whether this applies to a common assault, for it can hardly be said to be indictable under that Act. Whenever any person shall be convicted of any indictable misdemeanour punishable under that Act, the court may, if it shall think fit, in addition to or in lieu of any punishment by that Act authorised, fine the offender and require him to enter into his own recognizances and to find sureties, both or either for keeping the peace and being of good behaviour, provided that no person shall be imprisoned for not finding sureties under that clause for any period exceeding one year (s. 71).

5. *Proceedings before Justices.*

How punished.

Fine.

Any person convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, may, if the court think fit, in addition to their sentence, be adjudged to pay the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall, by affidavit or other inquiry and examination, ascertain to be reasonable; and unless the sum so awarded shall be sooner paid the offender shall be imprisoned for any term the court shall award not exceeding three months, in addition to any term of imprisonment to which he is sentenced (s. 74).

Costs.

But the costs of a prosecution for a common assault cannot be allowed by the court as in cases of felony under the 77th section of the Act; therefore, in such cases, the parties should be bound over by the justices to prosecute the assault under the 14 & 15 Vict. c. 55, s. 3.

It is an aggravation of the offence on account of the person on whom, or the place where, the same is committed; as where a man assaults or threatens another for suing him; a counsel or attorney for being employed against him; a juror for his verdict; or a gaoler, constable, or other ministerial officer for keeping him in custody, and properly executing his duty. (4 *Bla. Com.* 126.)

V. Summary Proceedings before Justices.

(1.) COMMON ASSAULTS UNDER 24 & 25 VICT. c. 100.

By the 24 & 25 Vict. c. 100, s. 42, "Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint, by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon conviction thereof before them at the discretion of the justices, either be committed to the common gaol or house of correction, there to be imprisoned with or without hard labour, for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of five pounds; and if such fine as shall be so awarded, together with the costs (if ordered), shall not be paid either immediately after the conviction or within such period as the said justices shall at the time of the conviction appoint, they may commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding two months, unless such fine and costs be sooner paid."

Common assaults.

5. *Proceedings
before
Justices.*

Aggravated
assaults on
females or boys
under fourteen
years of age.

Dismissal of com-
plaint and certifi-
cate thereof.

Certificate or
conviction to be a
bar to any other
proceedings.

Where assault
the fit subject
of an indictment,
justices not to
adjudicate.

No certiorari.

Sect. 43. "When any person shall be charged before two justices of the peace, with an assault or battery upon any male child, whose age shall not, in the opinion of such justices, exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said justices, if the assault or battery is of such an aggravated nature that it cannot, in their opinion, be sufficiently punished under the provisions thereinbefore contained, as to common assaults and batteries, may proceed to hear and determine the same in a summary way; and if the same be proved may convict the person accused; and every such offender shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for any period not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of twenty pounds, and in default of payment to be imprisoned in the common gaol or house of correction for any period not exceeding six months, unless such fine and costs be sooner paid; and if the justices shall so think fit in any of the said cases shall be bound to keep the peace, and be of good behaviour, for any period not exceeding six months from the expiration of such sentence."

Sect. 44. "If the justices upon the hearing of any such case of assault or battery, upon the merits where the complaint was preferred by or on behalf of the party aggrieved under either of the last two preceding sections, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall, accordingly, dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred."

Sect. 45. "If any person against whom any such complaint, as in either of the last three preceding sections mentioned, shall have been preferred by or on the behalf of the party aggrieved, shall have obtained such certificate, or having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment, or imprisonment with hard labour awarded, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause."

But it is provided, by sect. 46, "That in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same; it is provided also that nothing therein contained should authorize any justices to hear and determine any case of assault or battery in which any question shall arise, as to the title to any lands, tenements, or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy, or insolvency, or any execution under the process of any court of justice."

Sect. 72. "No summary conviction under that Act shall be quashed for want of form, or be removed by *certiorari* at any of her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

Sect. 76. "Every offence punishable on summary conviction under that Act, may be prosecuted in England, in the manner directed by the 11 & 12 Vict. c. 43, or in Ireland as 14 & 15 Vict. c. 93, or in such other manner as may be directed by any Act that may be passed for like purposes; but nothing in that Act is to affect any enactment as to procedure in case of any offence punishable on summary conviction within the city of London, or the metropolitan police district, or the recovery

or application of any penalty or forfeiture for any such offence." Therefore the complaint need not be on oath. (11 & 12 Vict. c. 43, s. 10.)

5. *Proceedings before Justices.*

The above provisions do not prevent the prosecutor from going to the sessions and preferring his indictment in the first instance, for it is clear law, that a party assaulted has several remedies. He may proceed by indictment, or by action, or he may apply for a summary conviction before two magistrates under the statute. (*R. v. Deny*, 20 L. J. M. C. 189.) But the magistrates have no jurisdiction to convict of the assault upon a complaint made before them for the purpose of procuring the defendant to be bound to find sureties of the peace. (*R. v. Deny, ubi sup.*)

As the certificate of dismissal.—The certificate of dismissal is grantable under sect. 44, upon the hearing of any case of assault and battery, on the merits where the complaint was preferred by or on behalf of the party aggrieved. In the repealed Act, 9 Geo. IV. c. 31, the corresponding section did not contain the words "on the merits." And the result of this difference in the language of the two sections seems to be that the cases of *Tunnickiffe v. Tedd* and *Vaughton v. Bradshaw*, are inapplicable to the present enactment. In *Tunnickiffe v. Tedd*, (5 C. B. 553; 17 L. J. M. C. 67,) where a complainant had obtained a summons from the magistrates against the defendant for an assault, and when the case was called on before the magistrates, and both parties were in attendance, the information having been read, and the defendant having pleaded not guilty, the complainant declined to call witnesses, stating it to be his intention to bring an action against the defendant, it was held that the magistrates were right in granting a certificate of dismissal, as what had taken place constituted a hearing. In *Vaughton v. Bradshaw*, (9 C. B. N. S. 103; 30 L. J. C. P. 93,) where the complainant laid an information for an assault and took out a summons, which was served on the defendant, though he afterwards and before the day for hearing by his agent, gave notice both to the defendant not to attend, and to the magistrate's clerk that he should not attend, but the defendant attended and claimed to have the information dismissed, and a certificate of dismissal granted in the complainant's absence, it was held that a certificate of dismissal was rightly granted, for that what had happened amounted to a hearing, because the complainant had no right to withdraw after once laying his information and taking out summons.

Dismissal to be after a hearing "on the merits."

The words "where the complainant was preferred by or on behalf of the party aggrieved," are also newly introduced in the present enactment.

The granting of the certificate of dismissal after the complainant has been dismissed on either of the three grounds specified is a ministerial act, and does not lie in the discretion of the magistrate, for the word "shall" is imperative; (*Hancock v. Somes*, 1 E. & E. 795; 28 L. J. M. C. 196; *Costar v. Hetherington*, 1 E. & E. 802; 28 L. J. M. C. 198;) and the word "forthwith" means forthwith upon demand of the party entitled to it; and it is immaterial whether the prosecutor was present or not when the certificate is demanded. A certificate granted after the parties had left the court, and before the next case was called on, (*Hancock v. Somes, ubi sup.*), or after an interval of five days, and after the commencement of an action, (*Costar v. Hetherington*), is in compliance with the directions of the statute; but in *Reg. v. Robinson*, (12 A. & E. 672,) a certificate applied for and granted after a lapse of two months, and after a bill of indictment found at two shillings for the same assault, was held, under the circumstances of that case, not to be granted forthwith, and so no answer to the indictment; but this case has been reflected upon in the two later cases above cited. Probably if the magistrate refused to grant it

When to be granted.

5. Proceedings before Justices.

immediately on demand, the court would grant a *mandamus* to compel him to grant it. (*Crompton, J., in Costar v. Hetherington.*)

A defence under the 45th section is only available in bar of a prosecution or action, if specially pleaded. (*Harding v. King*, 6 C. & P. 427; and see *supra*, p. 316; *Hartley v. Hindmarsh*, 35 L. J. M. C. 255.)

Complaint must be within the jurisdiction of the justices.

As the certificate of dismissal is only to have the effect of a release from other proceedings when the dismissal takes place, by reason of one of the three grounds specified, it ought, therefore, to show upon the face of it the ground upon which it is given, otherwise neither party can know whether it is a bar or not; (*Skuse v. Davis*, 10 A. & E. 635;) and as it can only be available where the magistrates granting it have jurisdiction, the case of assault heard must be such as the magistrates adjudicating on it have jurisdiction over; but if the charge is before them on a legal complaint, and the evidence goes to prove an offence committed, over which they have not jurisdiction to hear and determine, as if, on a complaint of an assault, the evidence go to show that a rape or assault, with intent to commit a felony, has been committed, they may, if they disbelieve the evidence as to the rape or intent, convict as to the residue of it of an assault. (*Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J. M. C. 152; *Anon.* 1 B. & Ad. 382; and see *In re Thompson*, 6 H. & N. 193; 30 L. J. M. C. 19.)

Under sect. 46 it is left to the discretion of the justices to find whether an assault was or was not accompanied by any attempt to commit felony, and if it is not clear upon the evidence before them that, admitting the evidence to be true, the acts complained of were such as showed an intention to commit felony, the court will not say that they had no jurisdiction to convict for a common assault, though the charge were one of assault, with intent to commit felony. (*Anonymous*, 1 B. & Ad. 382; *Re Thompson*, 6 H. & N. 193; 30 L. J. M. C. 19.)

Previous summary conviction.

A summary conviction before justices is also pleadable in bar to an indictment or action for the same cause, see *ante*, p. 316.

VI. Forms.

(1.) Warrant in the first instance for an assault. (a)

—(to wit.) To the constable of _____, and to all other peace officers in the said county of _____.

WHEREAS complaint hath this day been made before the undersigned [one] of her Majesty's justices of the peace in and for the said county, upon the oath of A. B. of _____ in the said county [labourer], that C. D. of _____ aforesaid [butcher], on the _____ day of _____ did violently assault and beat him the said A. B. at _____ aforesaid, in the county aforesaid: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said C. D. and to bring him before some one or more of Her Majesty's justices of the peace in and for the said county, to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal the _____ day of _____ A.D. _____ at _____ in the county aforesaid.

(2.) Commitment for an assault and for want of sureties.

—(to wit.) To the constable of _____ and to the keeper of the [House of Correction] at _____, in the said county of _____.

WHEREAS C. D. was this day brought and charged before me, E. F., one of her Majesty's justices of the peace for the said county of _____ on the oath of A. B., with assaulting and beating the said A. B., and with committing divers misde-

(a) See *Caudle v. Seymour*, 1 Q. B. 889.

meanours against her Majesty's peace. And whereas the said C. D. hath refused [or neglected] (although by me required) and doth refuse [or neglect] to find sureties as well for his personal appearance at the next [general quarter] sessions of the peace, which shall be holden in and for the said county of _____ to answer the premises, as also in the meantime to keep her Majesty's peace to all her liege subjects, particularly towards the said A. B.: These are, therefore, in her Majesty's name, to command you the said constable, or other peace officer, safely to convey the said C. D., and deliver him to the keeper aforesaid, requiring you the said keeper to receive and safely to keep the said C. D. until he shall find such sureties, or otherwise be discharged by due course of law. Given under my hand and seal this _____ day of _____ aforesaid, one thousand eight hundred and _____ E. F. (L.S.)

6. Forms.

— to wit. THE jurors for our Lady the Queen upon their oath present, that C. D. on the _____ day of _____ in the year of our Lord _____ at _____ in the county aforesaid, in and upon A. B. an assault did make, and him the said A. B. then and there did beat, wound and illtreat,* and then and there to him other wrongs and injuries did, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity. [If the assault be of an aggravated nature, allege as above as far as the asterisk and then proceed, "thereby then occasioning to the said A. B. actual bodily harm."]

(3.) Indictment for a common assault.

— to wit. THE jurors for our Lady the Queen upon their oath present, that C. D. on the _____ day of _____ in the year of our Lord _____ at _____ in the county aforesaid, in and upon one A. B., did make an assault and him the said A. B. did then and there beat, wound, and illtreat, and him the said A. B. then and there unlawfully and injuriously, and against the will of the said A. B., and against the laws of this realm, did imprison, and keep and detain in prison for a long space of time, to wit, for the space of twelve hours then next following, and other wrongs to the said A. B. then and there did to his damage, and against the peace of our Lady the Queen, her crown and dignity. [Add a count for a common assault, as sup.]

(4.) Indictment for an assault and false imprisonment.

To A. B. of _____, labourer.
— } WHEREAS complaint hath this day been laid before the undersigned two to wit. } of her Majesty's justices of the peace in and for the said county of _____ by _____, being [or "on behalf of,"] the party aggrieved in that behalf, for that you, on the _____ day of _____ at the parish of _____ in the said county, did unlawfully assault and beat the said _____: These are, therefore, to command you, in her Majesty's name to be and appear on _____ at _____ o'clock in the forenoon, at _____ before the said justices of the peace for the said county to answer to the said complaint, and to be further dealt with according to law. Given under our hands and seals this _____ day of _____ in the year of our Lord _____ at _____ in the county aforesaid.
J. S. (L.S.)
J. D. (L.S.)

(5.) Summons to defendant under 24 & 25 Vict. c. 100, s. 42.

— } BE it remembered that on the _____ day of _____ in the year to wit. } of our Lord _____ at _____ in the said county, A. B. is convicted upon the complaint of one C. D., (being the party aggrieved in that behalf,) before the undersigned, two of Her Majesty's justices of the peace for the said county, for that he, the said A. B., on the _____ day of _____ in the year of our Lord _____ at _____ in the county aforesaid, unlawfully did assault and beat the said C. D. contrary to the statute in that case made and provided, and against the peace of our Lady the Queen, her crown and dignity, and we, the undersigned, adjudge the said A. B., for his said offence to forfeit and pay the sum of £ _____, to be paid and applied according to law, and also to pay to the said C. D. the sum of £ _____ for his costs in that behalf, and if the said several sums be not paid forthwith [or "on or before _____ next"], we adjudge the said A. B. to be imprisoned in the common gaol [or "house of correction"], at

(6.) Conviction for assault under 24 & 25 Vict. c. 100, s. 42, in fine.

6. Forms.

in the said county ["and there to be kept to hard labour"] for the space of months [not exceeding two] unless the said several sums ["and the costs and charges of conveying the said A. B. to the said common gaol (or house of correction)"], shall be sooner paid. Given under our hands and seals the day and year first above mentioned, at in the county aforesaid.

J. S. (L.S.)

J. D. (L.S.)

Where the punishment is by imprisonment only, see Form given in 11 & 12 Vict. c. 43, s. 17 (I 3). For warrant of commitment, see 11 & 12 Vict. c. 43, Forms in Schedules (O 1), (P 1). And see tit. "Commitment," post.

(7.) Certificate of dismissal of complaint under 24 & 25 Vict. c. 100, s. 44.

— to wit. BE it remembered, that on the day of , in the year of our Lord , at in the county aforesaid, complaint was made before the undersigned being two of her Majesty's justices of the peace in and for the said county by A. B., being the party aggrieved in that behalf, for that C. D. did, on the day of at in the county aforesaid, unlawfully assault and beat the said A. B., contrary to the statute in that case made and provided. And afterwards, to wit, on, &c., at , in the said county, the said C. D. and the said A. B. appeared before us in order that we should hear and determine the said complaint; whereupon we, the undersigned, so being two of her Majesty's justices of the peace for the said county of , acting in and for the said county, and having heard what the said A. B. had to allege in that behalf, and the evidence adduced by him in support of the said complaint, and having also heard what the said C. D. then and there alleged in his defence, did then and there adjudge that the said offence was not proved [or, "that the said C. D. was lawfully justified in committing the said assault and battery," or "that the said assault and battery was so trifling as not to merit any punishment"]; and we did then and there, accordingly, on the ground aforesaid, dismiss the said complaint. Given under our hands this day of .

J. D.

J. S.

(8.) Plea of previous conviction under 24 & 25 Vict. c. 100, s. 42.

C. D. } AND the said C. D., in his own proper person, comes into court here, against } and having heard the said indictment read, says that our said Lady the Reg. } Queen ought not further to prosecute the said indictment against him the said C. D. in respect of the offence in the said indictment mentioned, because he says that heretofore, to wit, on the day of in the year of our Lord at the parish of in the county of he, the said C. D., was upon the complaint of the said A. B., then and there being the party aggrieved in that behalf [reciting the complaint in the past tense], convicted before the said E. F. Esq., and G. H., Esq., so being such two of her Majesty's justices of the peace in and for the said county, for that the said C. D. did on, &c., at, &c., unlawfully assault and beat the said A. B. in the peace of our said Lady the Queen, then and there being contrary to the statute in that case made and provided; and the said justices did then and there adjudge the said C. D. for this said offence to forfeit and pay the sum of £5 of lawful money of Great Britain, to be paid and applied according to law, and also to pay to the said A. B. the sum of £ for his costs, and in default of immediate payment of the said several sums by the said C. D. as aforesaid, they, the said justices, did adjudge the said C. D. to be imprisoned in the house of correction for the said county for the space of two calendar months unless the said several sums should be sooner paid; as by the record of the said conviction more fully and at large appears, which said judgment and conviction still remains in full force and effect, and not in the least reversed or made void. And the said C. D. further says that the assault and battery of the said A. B., of which he, the said C. D. was so convicted as aforesaid, and the wounding of the said A. B. in the said indictment mentioned are one and the same assault and battery, and not other and different. And he, the said C. D. further says, that he, the said C. D., has duly paid the whole amount of the said several sums so adjudged by the said justices to be paid under the said conviction as aforesaid in manner and form as by law required. And this he, the said C. D. is ready to verify. Wherefore he prays judgment, if our said Lady the Queen ought further to prosecute the said indictment against him, the said C. D., in respect of the said offence in the said indictment mentioned, and

that he, the said C. D., may be dismissed and discharged from the same. And as to the felony aforesaid, in the said indictment mentioned, the said C. D. says that he is not guilty thereof, and therefore he puts himself upon the country, &c.

Assaults in Particular Cases.

C. D. } And the said C. D. comes into court here and having heard the said
against } indictment read, says that our Lady the Queen ought not further to
Reg. } prosecute the said indictment because he says that heretofore, to wit, on
at in the county of , he the said C. D., was upon
a certain complaint made by the said A. B. in the indictment mentioned before
and being two justices of the peace in and for, and acting
in and for the said county, he then and there being the party aggrieved in
that behalf, brought before the said and then and
there so being two such justices of the peace in and for the said county charged
by the said complainant, for that he the said C. D. did on &c., at &c., in the said
county, unlawfully assault and beat the said A. B. contrary to &c., and the said
two justices proceeded to hear and heard what the said A. B. had to allege in that
behalf and the evidence adduced by him in support of the said charge, and also
heard what the said C. D. then and there alleged in his defence, and the said
justices then and there adjudged that the said offence was not proved [or, "that the
said C. D. was lawfully justified in committing the said assault and battery," or,
"that the said assault and battery were so trifling as not to merit any punishment,"
as the case may be], and thereupon the said justices accordingly on the ground
aforesaid dismissed the said complaint, and forthwith made out their certificate
under their hands, stating the fact of such dismissal upon the ground aforesaid,
and delivered the same certificate to the defendant, which said judgment and
dismissal still remain in full force and effect; and the defendant says that the
said assault, &c., in respect whereof the said A. B. had so complained as aforesaid
before the said justices against him the defendant, and respect of which the said
justices had so adjudicated and granted the said certificate, was and is the same
identical assault, &c., mentioned and charged against him the said C. D. in the
said indictment, and the said indictment and the said complaint are proceedings
in respect of one and the same cause and not other or different. And this the said
C. D. is ready to verify. [Then he prays judgment that by the court here he
may be dismissed and discharged from the premises in the said indictment
specified, see the conclusion to the preceding Form (8)].

(9.) Plea of certificate of dismissal of complaint under 24 & 25 Vict. c. 100, s. 42.

Assaults in Particular Cases.

THE legislature has in many cases of aggravated assaults imposed a severer punishment than that which could be inflicted at common law, and in some cases has made the assault a felony.

We will proceed to consider of them, and

Herein of assaults,

- I. *With Intent to Rob, or with Menaces to Steal*, 324.
- II. *With Intent to Commit a Felony, or on Peace Officers*, 327.
- III. *Arising from Combination to raise Wages*, 330.
- IV. *On Preservation of Wrecks, or escape from Wrecks, and Assaults to Stop Grain, &c.*, 331.
- V. *Clergymen*, 332.
- VI. *On Seamen to prevent Working*, 333.
- VII. *Other Particular Assaults*, 334.

As to assaults on gamekeepers, &c. see *post*, "Game," Vol. II.; "Larceny," Vol. III.

As to assaults by shooting, stabbing, or poisoning, or sending explosive substances, or throwing destructive substances, see *post*, "Malicious Injuries to Persons," Vol. III.

1. *To rob, &c.*

I. Assaults with intent to Rob and with Menaces to Steal.

Intent to rob.

Punishment.

On trial for robbery jury may convict of an assault with intent to rob.

24 & 25 Vict. c. 96 s. 42. "Whoever shall assault any person with intent to rob shall be guilty of felony, and being convicted thereof, shall, (save and except in the cases where a greater punishment is provided by this Act,) be liable at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." By sect. 41: "If upon the trial of any person, upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned, shall be afterwards prosecuted for an assault with intent to commit the robbery, for which he was so tried."

Sect. 43. "Whosoever shall, being armed with any offensive weapon or instrument, rob or assault, with intent to rob, any person, or shall together with one or more other person or persons, rob or assault, with intent to rob, or shall rob any person, and at the time of, or immediately before, or immediately after such robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Demand with menaces or by force with intent to steal.

Sect. 45. "Whoever shall with menaces, or by force, demand any property, chattel, money, valuable security, or other valuable thing, of a person, with intent to steal the same, shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Nature of menaces.

Punishment.

Whipping.

Sect. 49. "It shall be immaterial whether the menaces or threats be of violence, injury, or accusation, to be caused or made by the offender, or by any other person." The imprisonment under that Act, may be with or without hard labour, in the common gaol, or house of correction. And wherever solitary confinement may be awarded, it may be for any portion or portions of the imprisonment, not exceeding one month, at any one time, and not exceeding three months in any one year. (s. 119.) And as to any person convicted under the 43rd section, the court may in addition to the punishment thereunder awarded, direct that the offender if a male, may be once, twice, or thrice privately whipped, subject to the provisions of that section. (26 & 27 Vict. c. 44. s. 1.)

Guardians or overseers may be ordered to prosecute in certain cases.

By 24 & 25 Vict. c. 100, s. 73, "Where any bodily injury is inflicted upon any person under the age of sixteen years, under circumstances amounting in law to an indictable felony, or an attempt to commit a felony, or an assault with intent to commit a felony, the justices who heard the complaint may require the guardians of the union, or the overseers of the poor, according to the circumstances of the case, to prosecute and pay the costs of the prosecution, and may bind over the clerk of the guardians, or one of the overseers to prosecute, if they deem it necessary, for the purposes of justice, and herein followed the requirements. Any person convicted of an assault may be ordered to pay the costs of the prosecution. (See 24 & 25 Vict. c. 100, s. 74,

post, 328.) As to the venue of any indictment, for any assault, with or without battery and wounding, where the offence was committed within the jurisdiction of the admiralty of England or Ireland, see tit. "Admiralty," ante, p. 46.

The evidence to support an indictment for an assault, with intent to rob, is usually such as would prove a robbery, but for failing to show a taking and carrying away, as for instance if from the absence of the prosecutor, the taking of the money, cannot be proved, the prisoner may nevertheless be convicted of an assault, with intent to rob, (*Mitchell's case*, 2 Den. C. C. 468, 21 L. J. M. C. 135.) There is now no necessity for a count for a robbery, and another for an assault, with intent to rob, but before the statute enabling a conviction for the latter offence, to be had on a count for the former, where the two counts were inserted in the indictment, the prosecution was put to their election between them, (*R. v. Gough*, 1 M. & Rob. 71,) whilst on the former count, no conviction for an assault with intent to rob could take place, (*R. v. Reid*, 2 Den. C. C. 88, 20 L. J. M. C. 67,) but upon an indictment for assault with intent to rob, if the evidence proves a robbery, the prisoner must still be acquitted.

If a robbery be charged as a simple robbery under the 40th section, the jury may find that the prisoner committed a simple assault with intent to rob, within the 41st & 42nd sections, or if an aggravated robbery be charged under the 43rd section, the jury may find an aggravated assault with intent to rob, under that section, (*Mitchell's case*, 2 Den. C. C. 468, 21 L. J. M. C. 135.) So it would seem that upon an indictment for an aggravated robbery, under the 43rd section, a verdict of guilty of a simple assault with intent to rob, under 41st and 42nd sections, might be returned, as the 41st section extends to "any indictment for robbery."

Under the 24th & 25th Vict. s. 41, if the assault is made upon one person, with the intention of committing a robbery upon another, as if the assault were on the coachman or servant with intent to rob the master, it would seem to be within that section of the statute, as the general expression, "intent to rob" is used, but it is doubtful whether the language used in the 43rd section, or at all events in the earlier part of it, would include such a case, for in that section the assault and the intent to rob seem applicable to one and the same person, and therefore an assault by an armed person, or by two or more unarmed, upon a driver of a post-chaise in which A. B. was with the intention of robbing A. B. if the jury were satisfied that the chaise was stopped with the intention of robbing A. B. does not seem within that section. (*R. v. Thomas*, 1 Leach, 330, 1 East, P. C. 417.) But the language of the latter part of the section is changed from the former, and if any person is wounded during the robbery of any person, that part of the section would apply.

An indictment for robbery is good, though it does not use the word rob, if an equivalent expression is used, such as violently steal. (*R. v. Monteth*, 2 Leach, C. C. 702 case, 289; and see *R. v. Huxley C. & M.*, 596.) To constitute the actual offence of robbery, there must be a removal of the property from the person, but the slightest severance even to a hair's breadth, is sufficient. (*R. v. Simpson*, 1 Dears C. C. 421; 24 L. J. M. C. 7.) The use of threats though vague of a charge though undefined combined with such violent gesticulation, as to put the object of them in bodily fear, and he under the influence of such conduct part with money, that amounts to a robbery, (*Reg. v. Norton*, 8 C. & P. 671,) provided the threats are not such as come within the 47th of 24 & 25 Vict. c. 96. (*R. v. Henry*, 2 Moo. C. C. 118; 9 C. & P. 309, as to which latter case, see *Reg. v. Stringer*, 2 Moo. C. C. 261.) To seize a person by the collar and charge him with indecent conduct with another person there present, a confederate of the accuser, in pursuance of a previous plan to induce the person seized to give money to escape the

1. To rob, &c

Assault with intent to rob.

Evidence.

Indictment

What amounts to robbery.

1. *To rob, &c.* annoyance attending such a charge, amounts to an aggravated assault with intent to rob, within the 43rd section of 24 & 25 Vict. c. 96. (*Reg. v. Stringer*, 2 *Moo. C. C.* 261 ; 1 *C. & R.* 181.)

It is a question for the consideration of the jury, on a review of all the facts connected with the assault, whether the prisoner had any intention to rob ; no actual demand of money, &c., is necessary to support the indictment, if the prisoner's acts are such as to leave the intention beyond doubt. (*R. v. Truster*, 1 *East*, *P. C.* 418 ; *R. v. Sherwin*, *id.* 421.)

Where A. was decoyed into a house and chained down to a seat, and compelled to write an order for the payment of money, and an order for the delivery of deeds, and the paper on which he wrote remained in his hand half an hour, but he was chained all the time : it was held that this was not an assault with intent to rob. *R. v. Edwards*, 6 *C. & P.* 521.)

Demand money
by menaces or by
force.

The demand of money with intent to steal, must, if successful, amount to stealing. The offences of stealing by menaces is defined in 2 *East P. C. c.* 16, s. 3, p. 555, in effect to be a taking against or without the consent of the owners, which is explained by stating that a colourable gift, which in truth is extorted by fear, amounts to such a taking. Therefore the threatened violence either to person or property, must be of a nature and extent to unsettle the mind of the person on whom it operates and take away from his acts that element of free voluntary action which alone constitutes consent. Whether the threat or menace is made under such circumstances as to produce that effect is a question for the jury. The demand of money by menaces or force must be with intent to steal, and therefore demand of money, property, by menaces, &c., in case of a disputed title to personal property, is not within this section. (*Reg. v. Walton*, *L. & C.* 288 ; 32 *L. J. M. C.* 79.) So a threat or menace by an unauthorized person to break open a door and take away property, by executing a distress warrant, is not necessarily of character to excite either fear or alarm, but nevertheless may be made under such circumstances as to have that effect. (*Reg. v. Walton*, *L. & C.* 288 ; 32 *L. J. M. C.* 79.) A demand must be proved of the property mentioned in the indictment with menaces or force, but a demand in words is not necessary, gestures, or any other made would suffice, (see *R. v. Jackson*, 1 *Leach*, 269,) and the menaces, &c., may be of violence, injury, or accusation, and made by the prisoner or by any other person, (24 & 25 Vict. c. 96, s. 49.) The indictment must state the person from whom the money, &c., was demanded, (*R. v. Dunkley*, 1 *Moo. C. C.* 90) as larceny can only be committed in respect of property, in the peaceable possession of another, there can be no intent to steal property within this section which has never been in possession of the person alleging himself to be intended to be robbed. Thus by menaces or violence to demand from a person by compelling him to execute a deed, or a promissory note, &c., on paper, pens, stamps, &c., provided for him by the wrong doers, is not within the 45th section. (*R. v. Edwards*, 6 *C. & P.* 515, 521 ; *R. v. Philpoe*, 2 *Leach*, 673 ; *R. v. Hart*, 6 *C. & P.* 106.) But this case is now provided for by the new provisions contained in the 24 & 25 Vict. c. 96, s. 48. But to obtain from a person a deed or valuable security which he held ready written in his pocket, would be a different case. And generally, if a man with menaces demand a sum of money of another, and the person does not give it to him because he has it not with him, the offence is the same, but, if it turns out as in *R. v. Edwards*, that a sum of money known to be not then in his possession was demanded, it is not within the statute, for there can be no intention to take from a person what he is known not to possess. (See *R. v. Edwards*, *ubi. sup.*)

Intent to steal.

The indictment need not set out the particular menaces, &c.

Commencement as usual, see p. 11, and state the offence as follows:] *For that the said A. B. on &c., at &c., feloniously did assault the said C. D. with intent then feloniously to rob the said C. D., and feloniously and violently to steal the moneys goods and chattels of the said C. D., contrary to the statute in that case made and provided and against the peace of our Lady the Queen, her crown, and dignity* [conclude as usual, see p. 11].

2. On Peace Officers.

(1.) Commitment for an assault with intent to rob,

Commencement as usual:] *for that the said C. D. on the _____ day of _____ at the parish of _____, in the said county, unlawfully did assault and beat a certain woman [or "female child,"] or male child not exceeding the age of fourteen years, to wit of the age of _____ years, named A. B., contrary to the statute, &c.* [conclusion as usual].

(2.) Commitment for aggravated assault on women or children.

_____, { *The jurors for our Lady the Queen, upon their oath, present that C. D. to wit. } on the _____ day of _____ A. D. at the parish of _____, in the said county, in and upon one A. B., feloniously did make an assault with intent then and there the moneys and chattels of the said A. B. from the person and against the will of the said A. B. feloniously and violently to steal take and carry away against the form of the statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.*

(3.) Indictment for assault with intent to rob.

_____, { *The jurors for our Lady the Queen upon their oath, present that C. D. to wit. } on &c., at &c., being then and there armed with a certain offensive weapon, to wit a bludgeon, then feloniously assaulted one A. B. with intent feloniously to rob the said A. B., and from the person of the said A. B. and against his will, the moneys, goods and chattels of his the said A. B., feloniously and violently to take steal and carry away, against the peace of our Lady the Queen, her crown and dignity.*

(4.) Indictment for aggravated assault with intent to rob.

Commencement as above:] *That A. B. on &c., at &c., with menaces [or "by force," or "with menaces and by force,"] feloniously demanded of C. D. five shillings and sixpence, the money (chattel, money, valuable security, or valuable thing), of the said C. D., with intent the said money from the said C. D. feloniously to steal, take and carry away against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown, and dignity.*

(5.) Indictment for demanding money, &c., with menaces, &c., with intent to steal.

[The property, money, chattel, &c., demanded, must be stated according to the fact. If the demand were of a specific chattel or valuable security, it may be stated thus: "*a certain chattel to wit _____*," or "*a certain valuable security to wit _____*"].

II. Assaults with intent to Commit a Felony or on Peace Officers, or to resist lawful Apprehension.

By the 24 & 25 Vict. c. 100, s. 38, "whoever shall assault any person with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension, or detainer of himself, or of any other person for any offence, shall be guilty of a misdemeanour." The punishment by the same section is imprisonment for any term not exceeding two years with or without hard labour.

Punishment.

The imprisonment may be either in the common gaol or house of correction. (24 & 25 Vict. c. 100, s. 69.)

Sect. 71. "The court may in addition to or in lieu of the punishment

2. On Peace Officers.

Prosecution by guardians or overseers.

Costs.

Evidence of intent.

authorized, fine the offender and require him to enter into his own recognizances, and to find sureties both or either for keeping the peace and being of good behaviour, but no person is to be imprisoned for not finding sureties for any period exceeding one year."

As to offences committed within the jurisdiction of the Admiralty of England or Ireland, see tit. "*Admiralty*," ante, p. 46.

By 24 & 25 Vict. c. 100, s. 73, "Where a complaint is made of any bodily injury inflicted upon any person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to (amongst others) an assault with intent to commit a felony; if the two justices who heard the complaint certify in writing that it is necessary for public justice that the prosecution should be conducted by the guardians of the union or place, or if there be no guardians by the overseers of the place where the offence was charged to have been committed, and such certificate be personally served upon the clerk of the guardians or one of the overseers, such guardians or overseers shall conduct the prosecution and pay the costs incurred beyond those allowed by the court out of the common fund of the union, or funds in the hands of the guardians or overseers, as the case may be. And the clerk of the guardians or one of the overseers, as the case may admit of, may, if thought necessary, be bound over to prosecute."

By sect. 74, "And any person convicted on any indictment of any assault may, in addition to the sentence passed upon him, be adjudged to pay to the prosecutor the costs and expenses, and such moderate allowance for the loss of time as the court shall by affidavit or other inquiry and examination ascertain to be reasonable, of the prosecution, and unless the sum awarded be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence; and by sect. 75 such costs may be levied by distress, and sale of the offender's goods and chattels. But the court before which the offence is prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony" (s. 77.)

When a felony is not completed, or there is no prospect of substantiating it by the evidence, the defendant should be indicted for an assault with intent to commit it—as, for instance, a rape—though as we have seen, in cases of robbery, there is no necessity for the count for assault with intent. (See *Reid's case*, 2 Den. C. C. 88; 20 L. J. M. C. 67; *Mitchell's case*, 2 Den. 468; 21 L. J. M. C. 135; *Gough's case*, 1 M. & Rob. 71.) But care must be taken not to indict for the misdemeanour, when the evidence will prove the felony, for if this should appear on the trial the offender must be acquitted. (*R. v. Harmwood*, 1 East, P. C. 411, 440; *R. v. Saunders*, 8 C. & P. 265; *R. v. Stanton*, 1 C. & K. 419.) Under a count for an assault, with intent to commit a rape, the defendant may be convicted of an assault with intent to abuse, *i. e.*, an indecent assault; (*R. v. Dawson*, 3 Stark. N. P. 62;) but an assault with intent to commit a rape is very different from an assault with intent to have an improper connection. The former is with intent to have connection by force, but to attempt by surprise or fraud, to get possession of the person of the prosecutrix, is not an assault with intent to commit a rape, though it is a common assault. (*R. v. Stanton*, 1 C. & K. 415.) To prove the intent evidence of previous attempts to commit the same offence is not admissible. (*R. v. Lloyd*, 7 C. & P. 318.)

A boy under the age of 14 cannot be convicted of the offence. (*R. v. Eldershaw*, 3 C. & P. 396.) And evidence is not admissible to show that in point of fact, he could commit the offence. (*R. v. Phillips*, 8 C. & P. 736.)

If a man without authority attempt to arrest another illegally, it is a breach of the peace, and any other person may lawfully interfere to

prevent it, doing no more than is necessary for that purpose. (*R. v. Osmer, 5 East, 308.*)

2. On Peace Officers.

And an indictment for an assault to resist a lawful apprehension by an officer of a court executing process, must show that the officer was the proper known officer of the court whose process he was executing and that he was acting with lawful authority. (*R. v. Osmer, 5 East 304.*)

24 & 25 Vict. c. 100, s. 62, whoever shall attempt to commit the said abominable crime (of buggery) or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of misdemeanour and being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Assault on males with intent.

22 & 23 Vict. c. 17, s. 1, no bill of indictment for any indecent assault shall be found by the grand jury, unless authorized in the manner in the Act specified by a justice or a judge, or the attorney general, or by sect. 2, in case of a refusal of a justice so to authorize it, the prosecutor has entered into a recognizance to prosecute.

—, } *The jurors for our Lady the Queen, upon their oath, present that A. B.*
to wit, } of on the day of A.D. in
the county aforesaid, at in, and upon one C. D., unlawfully did make
an assault and him the said C. D. did beat, wound, and ill-treat with intent
him the said C. D. feloniously, wilfully, and of his malice aforethought to kill
and murder, [or state any other felony in the same manner], and other wrongs
to the said C. D. then did to the great damage of the said C. D., against the form
of the statute in such case made and provided, and against the peace of our Lady
the Queen, her crown and dignity [add a count for a common assault, ante,
p. 321].

(1.) Indictment for assault with intent to commit a felony.

—, } *The jurors for our Lady the Queen, upon their oath, present that C. D.*
to wit, } on the day of A.D. at in the said
county, in and upon one A. B., unlawfully did make an assault, and him, the
said A. B. did beat, wound, and ill-treat with intent in so doing to resist and
prevent the lawful apprehension and detainer of him the said C. D. [or "of one
E. F." for a certain offence for which he, the said C. D. [or E. F.] was then and
there liable to be apprehended and detained by the said A. B., that is to say, for
[state the offence generally as in a commitment] against the form of the statute
in such case made and provided, and against the peace of our Lady the Queen,
her crown and dignity [add a count for a common assault as p. 321].

(2.) Indictment for assault to resist the apprehension of an offender.

—, } *The jurors for our Lady the Queen, upon their oath, present that C. D.*
to wit, } on the day of A.D., at in the county
aforesaid, in and upon one A. B. then being a peace officer, to wit, a constable
of the parish of in the said county, and then being in the due
execution of his duty as such constable as aforesaid, unlawfully did make an
assault and him the said A. B. so then being in the execution of his duty as
aforesaid, did then beat, wound, and ill-treat, and other wrongs to the said A. B.
then did to the great damage of the said A. B. against the form of the statute in
such case made and provided and against the peace of our Lady the Queen,
her crown and dignity [add a count for a common assault, ante, p. 321].

(3.) Indictment for assaulting a peace officer in the execution of his duty.

—, } *The jurors, &c., present that C. D. on the day of A.D.*
to wit, } at in the said county, in and upon one A. B., unlawfully
and indecently did make an assault and him the said A. B. did then beat, wound,
and ill-treat, and other wrongs to the said A. B., then did to the great damage
of the said A. B. against the form of the statute in such case made and provided,
and against the peace of our Lady the Queen, her crown and dignity [add
a count for a common assault, as ante, p. 321].

(4.) Indictment for an indecent assault on a male.

3. *Combina-
tion to raise
Wages.*

III. Assaults arising from Combination to raise Wages.

24 & 25 Vict. c. 100, s. 41. "Whosoever in pursuance of any unlawful combination or conspiracy to raise the rate of wages or of any unlawful combination or conspiracy respecting any trade, business, or manufacture, or respecting any person concerned or employed therein, shall unlawfully assault any person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour."

A combination to effect any of the objects forbidden by the 6 Geo. IV. c. 129, s. 3, would be an unlawful combination, &c., respecting the trade, &c., on a person employed therein, within the above section. For a number of workmen to combine to go in a body to a master and say that they will leave the work if he does not discharge two fellow workmen in his employ, is an unlawful combination by threats to force the prosecutor to limit the description of his workmen (*Walsby v. Anley*, 3 E. & E. 516; 30 L. J. M. C. 121,) and a combination to endeavour to force workmen to depart from their work by such a threat as that they would be considered as blacks, and that other workmen would strike against them all over London, is unlawful. (*Ex parte Perham*, 5 H. & N. 30; 29 L. J. M. C. 33.) So also is a combination with a similar object to threaten a workman by saying to him that he must either leave his master's employ, or lose the benefit of belonging to a particular club and have his name sent round all over the country. (*O'Neill v. Longman*, 4 B. & S. 376; 32 L. J. M. C. 259.) An indictment or commitment alleging the offence to be a conspiracy to force workmen to depart from their work by threats need not set out the threats, as the gist of the offence is the conspiracy to force them to leave their work. (See *ex parte Perham*, *ubi sup.*)

Punishment.
Fine.

The imprisonment may be in the house of correction or the common gaol. (24 & 25 Vict. c. 100, s. 69.) And the offender may be fined in addition to or in lieu of his other punishment, and may be required to enter into his own recognizances and to find sureties both or either for keeping the peace, (sect 71.)

Costs.

As to costs see 24 & 25 Vict. c. 100, sections 74, 75, & 77, *ante*, p. 328.

(1.) Indictment
for an assault in
pursuance of a
conspiracy to
raise wages.

—, } *The jurors, &c., present that A. B., C. D., and E. F., on the*
to wit. } *day of* , A.D., *did amongst themselves unlawfully combine,*
conspire, confederate, and agree together to raise the rate of wages then usually
paid to workmen and labourers in the trade, business, or manufacture of cotton
spinners, and that the said A. B., C. D., and E. F., in pursuance of the said
conspiracy, on the day and year aforesaid, at , *in the said county, did*
on and upon one G. H., then unlawfully did assault the said G. H., and did then
beat, wound, and ill-treat, and other wrongs to the said G. H., did to the great
damage of the said G. H. against the form of the statute in such case made and
provided, and against the peace of our Lady the Queen, her crown and dignity
[add a count for a common assault, see *ante*, p. 321].

IV. Assaults on Preservation of Wrecks, and with intent to compel or obstruct Sale of Grain.

24 & 25 Vict. c. 100, s. 37. "Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized in or on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects

wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour."

The punishment may be by imprisonment in a gaol or house of correction, or by fine and recognizance and sureties, in addition to or in lieu of imprisonment, see 24 & 25 Vict. c. 100, ss. 69, 71.

See further tit. "*Wrecks*," Vol. V.

24 & 25 Vict. c. 100, s. 39. "Whosoever shall beat or use any violence, or threat of violence to any person with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of any wheat, or other grain, flour, meal, malt, or potatoes, in any market or other place, or shall beat or use any such violence or threat, to any person having the care or charge of any wheat, or other grain, flour, meal, malt, or potatoes, whilst on the way to or from any city, market town, or other place, with intent to stop the conveyance of the same, shall on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months, provided that no person who shall be punished for any such offence by virtue of this section, shall be punished for the same offence by virtue of any other law whatsoever."

4. *Preservation of Wrecks.*

Using violence with intent to deter, &c. from buying, &c. grains, &c. in a market or other place.

Summary conviction.

—, } To the constable of _____ and to the keeper of the [house of correction], at _____, in the said [county] of _____.

Whereas A. B. was this day charged before me J. S., one of her Majesty's justices of the peace, in and for the said [county] of _____, on the oath of C. D. of _____ (farmer), and others, for that he the said A. B. on the _____ day of _____, A.D. _____, at _____, in the said county unlawfully did assault E. F. Esq., and him the said E. F. then did strike and beat [or wound], on account of the exercise of his, the said E. F.'s duty in and concerning the preservation of a certain vessel then and there in distress [or "of a vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water"]; he, the said E. F. then and there being a magistrate and lawfully authorized in that behalf contrary to the statute, &c.

(1.) Commitment for assault on magistrates, &c. in saving a wreck.

—, } The jurors, &c., present that before and at the time of the committing of to wit. } the offence hereinafter mentioned, to wit, on the _____ day of _____, A.D. _____, one E. F., then being a magistrate [magistrate, officer, &c.] was engaged in the exercise of his duty as such magistrate in and concerning the preservation of a certain vessel [of any vessel in distress, &c.] then wrecked, stranded, and cast on shore, the said E. F. being then lawfully authorized thereunto, and that A. B. well knowing the premises, on the day and year aforesaid, in and upon the said E. F. unlawfully did make an assault, and him the said E. F. then unlawfully did strike and wound on account of the exercise of the said duty of him the said E. F. in and concerning the preservation of the said vessel so wrecked, stranded, and cast on shore as aforesaid against the form of the statute, &c., and against the peace, &c.

(2.) Indictment for assault on magistrate, &c. saving wreck.

—, } Be it remembered, that on the _____ day of _____, A.D. _____ in the to wit. } said county, C. D. is convicted before the undersigned two of her Majesty's justices of the peace in and for and acting in and for the said county, for that he the said C. D. on the _____ day of _____, A.D. _____, at _____, in the said county, unlawfully did beat, wound, and ill-treat one A. B. with intent thereby then to deter and hinder him from

(3.) Conviction for assault, with intent to obstruct the sale of grain.

4. Preservation of Wrecks.

selling [or buying] certain wheat and grain in the market of _____, in the said county, contrary, &c., and we adjudge the said C. D., for his said offence to be imprisoned [in the house of correction] at _____, in the said (county) [and then kept to hard labour] for the space of _____ months, and we also adjudge the said C. D. to pay the said A. B. the sum of £ _____ for his costs in that behalf, and if the said sum for costs be not paid forthwith [or "on or before _____ next"] then* we order that the said sum be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf* we adjudge that the said C. D. to be imprisoned in the said [house of correction] (and there to be kept to hard labour) for the space of _____ weeks, to commence at and from the determination of his imprisonment aforesaid unless the said sum for costs shall be sooner paid.

Given under our hands and seals the day and year first above mentioned at _____ in the county aforesaid.

J. S. (L. S.)

H. S. (L. S.)

Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks, say, "*inasmuch as it hath now been made to appear to me [or 'us,'] that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family [or 'that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress'] we adjudge,*" &c.

V. Assaulting Clergymen or other Ministers.

By threats to obstruct, &c. clergyman, &c. in performance of his duty.

By 24 & 25 Vict. c. 100, s. 36, whosoever shall by threats or force obstruct or prevent, or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house, or other place of divine worship, or in or from the performance of his duty, in the lawful burial of the dead in any churchyard or other burial place, or shall strike or offer any violence to or shall upon any civil process or under the pretence of executing any civil process arrest any clergyman or other minister who is engaged in or to the knowledge of the offender shall be going to perform the same, or returning from the performance thereof, shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years with or without hard labour.

Misdemeanour.

The indictment or commitment need not set out the threats. (See *ex parte Perham*, 5 H. & N. 30; 29 L. J. M. C. 33.)

The imprisonment may be in gaol or the house of correction. The offence is also punishable by fine and sureties of the peace, either or both. (See sects. 69, 71, *ante*, p. 327.)

(1.) Indictment for obstructing a clergyman by force or threats in the performance of his duties.

—, } The jurors, &c. present that C. D. on the _____ day of _____ to wit, } A.D. _____ at _____ in the said county, did by force [by threats] obstruct and prevent one A. B. then being a clergyman and the vicar of the parish of E. in the county aforesaid, from celebrating divine service in the parish church of the said parish [or in the performance of his duty in the lawful burial of the dead in the churchyard of the parish church of the said parish, against the form of the statute, &c., and against the peace, &c.

(2.) Warrant of commitment.

—, } To the constable of _____, and to the keeper of the [house of to wit, } correction] at _____ in the said county of _____ Whereas C. D. was this day charged before me J. S. one of her Majesty's justices of the peace in and for the said county of _____, on the oath of A. B. of _____ (farmer), and others for that the said C. D. on &c., at &c., by force (or "threats") obstructed one A. B. a clergyman then going to perform divine service in a certain church, to wit, the parish of _____ in the county of _____,

as the said C. D. then well knew contrary to the form of the statute and the peace, &c. These are, therefore, to command you, &c.

6. On Seamen.

—, } The jurors, &c., present that C. D. on the day of
to wit, } A.D. at in the county of unlaw- (3.) Indictment
fully did arrest one A. B. then being a clergyman upon certain civil process for arresting a
whilst he, the said A. B. so being such clergyman as aforesaid was going to clergyman, &c.
perform divine service in a certain church [or "chapel," &c.], at he, on civil process.
the said C. D. then well knowing that the said A. B. was then going to perform
the same as aforesaid against the form of the statute, &c., and against the peace, &c.

VI. On Seamen.

By 24 & 25 Vict. c. 100, s. 40, "whosoever shall unlawfully or with force hinder or prevent any seaman, keelman, or caster, from working at or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same, shall on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months; provided that no person who shall be punished for any such offence by reason of this section, shall be punished for the same offence by virtue of any other law whatsoever."

Preventing seaman, &c. from working at his trade.

Summary conviction.

As to forcing seaman on shore, see tit. "Seaman."

As to assaulting commanders of ships to prevent their fighting, see tit. "Piracy."

—, } Be it remembered that on the day of A.D. at
to wit, } in the said county, C. D. is convicted before the undersigned two of her (1.) Conviction
Majesty's justices of the peace in and for the said county; for that he the said for an assault to
C. D. on the day of at in the said county unlawfully prevent a seaman
and with force did hinder one A. B. then being a seaman [or "keelman," &c.] from working.
following his said occupation of a seaman from working at or exercising his said
lawful trade, business, and occupation of seaman [or "keelman"] as aforesaid, con-
trary to the form of the statute. And we adjudge the said C. D. for his said
offence to be imprisoned in the [House of Correction], at , in the said
county, and there kept to hard labour for the space of months. And we
also adjudge the said C. D. to pay the said A. B. the sum of £ for his
costs in their behalf, and if the said sum for costs be not paid forthwith [or "on or
before next"], then,* we order that the said sum be levied by distress and
sale of the goods and chattels of the said C. D., and in default of sufficient distress
in that behalf, we adjudge* the said C. D. to be imprisoned in the said house of
correction [and there kept to hard labour] for the space of weeks, to
commence at and from the termination of his imprisonment aforesaid, unless the
said sum for costs be sooner paid.

Given under our hands and seals the day and year first above mentioned, at
in the county aforesaid.

J. S. (L. S.)

H. S. (L. S.)

Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks (*), say "Inasmuch as it hath been now made to appear to us that the issuing of a warrant of distress in this behalf would be ruinous to the said C. D. and his family [or 'that the said C. D. hath no goods or chattels, whereon to levy the said sum for costs by distress'], we adjudge," &c.

7. Under
other Statutes.

VII. Under other Statutes.

Assaults on the metropolitan police are punishable also under the Metropolitan Police Act, (2 & 3 Vict. c. 47, s. 18). See tit. "*Police*." Assaults on special constables are provided for by 1 & 2 Will. IV. c. 4, s. 11; or county or district under 2 & 3 Vict. c. 93, s. 8; the punishment is a penalty not exceeding twenty pounds, in addition to the liability to punishment on indictment or information. See tit. "*Constable*."

On borough constables, 5 & 6 Will. IV., c. 76, s. 81. See tit. "*Constable*."

On constables appointed on canals and rivers, see 3 & 4 Vict. c. 50, s. 6; and on constables, under the Act for the Prevention of Cruelty to Animals, (12 & 13 Vict. c. 92), see tit. "*Constable*," "*Animals*."

On officer of prison, 5 & 6 Vict. c. 98, s. 25. See tit. "*Gaol*," Vol. II.

On officer of workhouse or relieving officer, or parish officer, 13 & 14 Vict. c. 101, s. 9; 4 & 5 Will. IV., c. 76; and 14 & 15 Vict. c. 105, s. 18. See tit. "*Poor*," Vol. IV.

On watchman, &c., under General Lighting and Watching Act, 3 & 4 Will. IV., c. 90, s. 41. See tit. "*Lighting and Watching of Parishes*," Vol. IV.

On officer of county court, 9 & 10 Vict. c. 95, s. 114. See tit. "*County Court*."

Assizes.

THE Justices of Assize derive their origin from the statute of Westminster, 2, (13 Ed. I. c. 30,) and acquired by virtue of various statutes between Magna Charta and the reign of Edward III. inclusive, complete original jurisdiction over all criminal cases, exclusive jurisdiction in certain real actions, concurrent jurisdiction with the Courts of Westminster, to give judgments in others, and the power of trying all country causes. The statutes by which these powers and authorities were conferred were Magna Charta, stat. of Westminster, 2, (13 Ed. I. c. 30; 21 Ed. I. stat. 1; 27 Ed. I. cc. 3 & 4; 12 Ed. II. cc. 3 & 4; 2 Ed. III. cc. 2, 16; 4 Ed. III. cc. 2, 11, 12; 5 Ed. III. c. 14; 9 Ed. III. s. 1, cc. 4 & 5; 14 Ed. III. st. 1, c. 16; 20 Ed. III. cc. 1, 6; 42 Ed. III. c. 11.) The Justices of Assize thus succeeded to the powers and authorities of the Justices in Eyre, who were an emanation of the Curia Regis before its division into the superior courts of law, and coequal with that court in dignity and power, and from the time of Edward III. may be said to have served in their stead.

The justices originally tried assizes and certain real actions by virtue of a writ or commission of assize directed to them, and certain others under the authority of Magna Charta, the stat. of Westminster, 2, and other statutes; but as all real actions, and the writs relating to them, were abolished by 3 & 4 Will. IV., c. 27, s. 36, this commission is now of no force.

There are four commissions under which the Justices of Assize now act:—

1. The commission of *nisi prius*, by virtue of the statute of Westminster the 2nd, and incidentally granted to Justices of Assize, and by subsequent statutes thereunder. The commission derives its name from the writ of *venire* given by that statute which ordained that all inquisitions should be heard before the justices at the bench, unless one of their number, and some person associated with him, should go into the county named before they came on to be heard at Westminster, and gave a writ of *venire* to the sheriff by which the jury were to be returned at

Westminster. (*Nisi talis et talis die et loco ad partes illas venirint.*) It is under this commission that the Judges of Assize have ever since had jurisdiction to try in the country issues in fact raised in the superior courts, which would otherwise have to be tried at Westminster. (*Ex parte Fernandez*, 10 C. B. N. S. 3 ; 30 L. J. C. P. 321.)

The causes were usually appointed to be tried at Westminster, in some Easter or Michaelmas term, by a jury returned from the country, when the cause of action arose and writs of *venire distringas* and *habeas corpora juratorum* went to the sheriff by which he was to have the jurors in attendance, unless before (*nisi prius*) that time the Judges of Assizes should come into the county. These writs, in which the words *nisi prius* appeared, which gave the name to the commission, no longer exist since the 15 & 16 Vict. c. 76, s. 104, which abolished the jury process.

2. A commission of general gaol delivery. This commission dates from the 27 Ed. I. c. 3, by which the Justices of Assize were, if they were both lay, to remain after taking the assizes, and if one were a clerk, then one of the knights of the shire was to be associate to him, that was a layman, and by writ to deliver the gaols of the shire of all manner of prisoners. (See form of the commission, *Dugd. Orig.* 53 a.)

By 4 Ed. III. c. 2, It is ordained that good and discreet persons other than of the places, if they be found sufficient, shall be assigned in all the shires of England, to take assizes, juries, and certifications, and to deliver the gaols, and that the said justices shall take the assizes, juries, and certifications, and deliver the gaols at the least three times a year, and more often if need be. And the justices assigned to deliver the gaols shall have power to deliver the same gaols of those that shall be indicted before the keepers of the peace, and that the said keepers shall send their indictments before the justices, and they shall have power to inquire of sheriffs, gaolers, and other, in whose ward such indicted person shall be if they make deliverance, or let to mainprise any so indicted which be not mainpernable, and to punish the said sheriffs, gaolers, and others, if they do anything against this Act.

3. A commission of *oyer and terminer*, to inquire, hear, and determine all treasons, felonies, and all injuries and offences whatsoever, and under this commission persons may be tried, whether they be in gaol or at large. It is said that four commissioners must be present to hold a session of *oyer and terminer*, (*Faulkner's case*, 1 Wms. Saund. 250, (n. 1) ; 1 Chitt. C. L. 143,) but a motion for a *habeas corpus*, on the ground that when the verdict of the jury was returned upon which a prisoner had been convicted one commissioner of *oyer and terminer*, instead of two, was present, was refused, though the court suggested that the objection might possibly be taken on a writ of error, (*R. v. Carlisle*, 4 C. & P. 416) ; one commission is enough for the whole circuit, and is made out for all the towns in the circuit.

4. A commission of the peace, in every county or circuit, usually accompanies that of *oyer and terminer*, but does not give so extensive a jurisdiction, being confined to crimes of a less heinous character.

These commissions are always accompanied by writs of association, in pursuance of the statutes, 13 Ed. I. c. 30 ; 27 Ed. I. c. 4 ; 12 Ed. II. c. 3 ; whereby certain persons, (usually the clerk of assize and his subordinate officers,) are directed to associate themselves with the justices, sergeants, and Queen's council, and they are required to admit the said persons into their society, in order to take the assizes, &c., that a sufficient supply of commissioners may never be wanting. But to prevent the delay of justice by the absence of any of them, there is also issued as of course, a writ of *si non omnes*, directing that if all cannot be present, then that any two of them, (a judge, a sergeant, or Queen's council, being one,) may proceed to execute the commission. (2 Hale, 39 ; 2 Hawk, cc. 5, 6, 7, 8, 3 Steph. Com. bk. 5, c. 4.)

The court of assize is a superior court of record, and a judge thereof

Assizes.

has power to commit, upon a general warrant, any person whom the court adjudges to have committed a contempt of it, by conduct which it shall deem an obstruction of the course of justice. (*Ex parte Fernandez*, 10 C. B. N. S. 3; 30 L. J. C. P. 321.) In that case a witness was committed for refusing to answer a question which the judge deemed a lawful one, and the warrant neither set forth the question nor the cause of committal, and the imprisonment was for a fixed term, and the warrant was held good.

Commission to whom directed.

The proper constitution of the court, depends upon the respective commissions, thus, the commission of assize and *nisi prius* is directed to the judges, and sergeants, and Queen's counsel, on the circuit, (13 & 14 Vict. c. 25). The commission of gaol delivery, which is a distinct commission, to deliver each particular gaol on the circuit is directed to the same persons.

To Queen's counsel, 13 & 14 Vict. c. 25.

The commission of *oyer and terminer* contains the names not only of the judges, sergeants, and Queen's counsel on circuit, but also the lord chancellor, the lord president of the council, the lord privy seal, and the noblemen in the district of the circuit, the quorum consisting of the judges, sergeants, and Queen's counsel. The power to name Queen's counsel, was given by 13 & 14 Vict. c. 25, which enacts, "Any person being one of her Majesty's counsel learned in the law, or being a barrister-at-law, having a patent of precedence, may be named in any commission for the despatch of civil or criminal business, at any county or place, or upon any circuit in England and Wales, or either of them, or though such person be not of the degree of the coif, and any such person shall and may, under any commission in which he shall be so named, be and act as a judge, or commissioner of assize, as fully to all intents and purposes, as if at the time of issuing such commission, and since he had been of the degree of the coif: any law, custom, or usage to the contrary notwithstanding. To the persons named in the several writs, the associates are to be added. Any two present in court, of whom one must be of the quorum, are sufficient to make a court.

2 & 3 Vict. c. 22

By the statute of Westminster the 2nd, the *nisi prius* causes to be tried by the Judge of Assize, must have been brought in the Court of Queen's Bench, or Common Pleas; and where a record was brought down from the Court of Exchequer, a separate commission had to issue from that court, to enable the Judges of Assize to try it, but by the 2 & 3 Vict. c. 22, all Judges of Assize are authorized to try all causes pending in the Court of Exchequer, which may be brought before them on circuit. The justices of *nisi prius* have jurisdiction as such, in cases of felony or treason, by 14 Hen. VI. c. 1. (*See 2 Hale*, 39, 42.)

And upon an indictment found at the sessions, and transmitted to the assizes, by the Justices at Sessions, though it be not returned by *certiorari*, the Judges of Assize should try it. (*R. v. Wetherell*, R. & R. C. C. 381.)

Does not supersede the commission of the peace or in the county.

The various commissions under which the Judges of Assize act, have more or less extensive operation, according to the wording of each, but the same persons being entrusted with all these commissions of assize, they may proceed under one where they have no jurisdiction, under another, and may execute them at the same time. (2 *Hale*, 34; 2 *Hawk*, c. 5, s. 21.) The effect of these commissions, upon the judges opening them in a county, has not the effect of superseding a commission of the peace in that county, so that a court of quarter sessions, borough, or county, may sit with perfect validity, at the same time that the judges of assize are sitting, in the same county, notwithstanding the possibility of a clash of authorities, in carrying out the commission of gaol delivery, and the local commission of the peace. (*Smith v. the Queen in error*, 13 Q. B. 738; 18 L. J. M. C. 207.) It however need hardly be said, that it would not be decent for the court of quarter sessions to sit in the same town, at the same time with the court of assize. In that case error was brought from the general quarter sessions, for the borough of

Manchester, holden before the recorder, at the time when the judges of assize were sitting under their commission of *oyer* and *terminer* and general gaol delivery at Liverpool, upon a conviction for felony thereat, and it was held that the conviction was good. But the court in delivering judgment said, that although we are of opinion that there was no defect of jurisdiction, nor indeed on a consideration of all the circumstances any inconvenience in the holding of the sessions, at which the plaintiff in error was convicted during the time of the assizes, for in this respect there may be an obvious distinction between a recorder and the magistrates of a county, yet we cannot dismiss the case without expressing our opinion that it would be highly inconvenient and improper, generally speaking, for the magistrates of a county to hold their sessions concurrently with the assizes, even in a different part of the county; of course we cannot anticipate that they should hold them concurrently at the same place. (*Smith v. Reg.*, *ubi sup.*)

The assizes are described in the record as of one day, and the entry in it refers all the proceedings to the commission day of the assizes, but, for the purposes of doing substantial justice in a collateral proceeding, it may be shewn that such legal day consisted of several natural days, or even of a fraction of a day, and that a conviction took place, or a fact occurred, on the day or at the time of day on which in truth it so occurred. (*Whitaker v. Wisbey*, 12 C. B. 44; 21 L. J. C. P. 116.) Thus, in an action of trover to recover goods, where the plaintiff claimed under a deed of assignment executed on the 20th of March, by T. W., the plaintiff's brother, who was tried and convicted of felony at the assizes at C., of which the commission day was on the 19th of March, and the trial and conviction of whom took place on the 24th of March. The defendants were the corporation of C., who claimed as grantees of the goods of felons convict. The record as drawn up began with a caption, that on a certain assize, held on the 19th of March, the jury presented, &c. The court, however, held the plaintiff entitled to recover, on the ground that, on the broad principle that truth was to prevail over fiction, the record might be explained to mean that the assizes began on the 19th, but continued beyond that day; and it might be shewn that the trial and conviction, in fact, took place on the 24th. (*Whitaker v. Wisbey*, *ubi sup.*)

Duration of
assizes.

And at any time during the assizes, even though after the business is over, and they have been adjourned to the judges' lodgings, a sentence may be corrected or altered. (*R. v. Fletcher*, R. & Ry. C. C. 58.) For some purposes the whole circuit is deemed continuous, as for instance, to protect a barrister practising on it from being taken in execution on civil process. (*Re Sheriff of Oxfordshire*, 2 C. & K. 200.)

The assizes are held twice in every year, in the respective vacations, after Hilary and Trinity terms. And it is also usual to issue special commissions of *oyer* and *terminer*, and general gaol delivery to a judge, to deliver the gaols in certain places on the circuit, after Michaelmas term.

When held.

The power of directing at what place or places in any county in England or Wales the assizes shall be held, and in how many places in a county, and of issuing special commission, is by the 26 & 27 Vict. c. 122, s. 1. "Her Majesty, by and with the advice of the most honourable Privy Council, shall have power, from time to time, to order and direct that the circuits of her Majesty's judges in England and Wales, or any of such circuits, shall be altered by taking away from any circuit, any county or counties, or any part or parts of any county or counties, and annexing the same to any other circuit or circuits, and every such alteration shall take effect upon, and from the date of the order in council, in and by which the same shall be ordered and directed, or from such other time as shall be provided in such order."

Power to alter
circuits.

By sect. 2, "all the powers and provisions contained in the 3 & 4 Will. IV. c. 71, s. 3, shall extend, so far as the same are applicable, to all

Assizes.

Power to divide counties for the purpose of holding assizes in different divisions of the same county.

Justices of assize may hold courts either in counties at large or in adjoining counties of cities or towns.

orders in council to be made, and to all acts to be done by virtue of this Act, and may be used and applied for any of the purposes herein mentioned."

Sections 3 & 4 relate to the salaries of clerks of assize on the alteration of circuits, and to altering the number of revising barristers.

The 3 & 4 Will. IV. c. 71, s. 3, enacts, "In case his Majesty, by and with the advice of his most honourable Privy Council, shall think fit to order and direct that the assizes or any such special commissions shall be holden at more than one place in any one county, it shall be lawful for his Majesty, by and with the advice aforesaid, to divide any such county for the purposes of this Act, and to make rules and regulations touching the venue in all cases, civil and criminal, then pending or thereafter to be pending and to be tried within any division of such county so to be made as aforesaid; and touching the liability and attendance of jurors, whether grand jurors, special jurors, or common jurors, at the assizes and sessions as aforesaid, or at any sessions under any special commissions to be holden within any such division; and touching the use of any house of correction or prison as a common gaol, and the government and keeping thereof; and touching the alterations of any commissions, writs, precepts or other proceedings whatsoever for carrying into effect the purposes of this Act; and touching any other matters that may be requisite for carrying into effect the purposes of this Act; and all such rules and regulations shall be of the like force and effect as if the same had been made by the authority of Parliament, and shall be notified in the *London Gazette*, or in such other manner as his Majesty, by and with the advice of his most honourable Privy Council, shall think fit to direct."

By 2 & 3 Vict. c. 72, intituled, "An Act for enabling Justices of Assize and *Nisi Prius*, *Oyer* and *Terminer*, and Gaol Delivery, to hold Courts for Counties at large in adjoining Counties of Cities and Towns, and conversely," (24th August, 1839,) reciting "That it would facilitate the dispatch of business if her Majesty's justices of assize were authorized to hold the assizes of and for the counties at large in England and Wales, and also of and for any county of a city, county of a town, borough, or other jurisdiction locally situate within or adjacent to such county at large, in any court house or other building, whether in or belonging to such county at large, or in or belonging to such county of a city, county of a town, borough, or other jurisdiction, indiscriminately:" it was therefore enacted, "that it shall be lawful for her Majesty's justices of assize, or other her Majesty's commissioners by whom any court shall be holden by virtue of any of her Majesty's commissions of assize or *nisi prius*, *oyer* and *terminer*, or general gaol delivery, to hold such court for any county at large in England and Wales, and also for any county of a city, county of a town, borough, or other jurisdiction locally situate within or adjacent to such county at large, in any court house or other building, whether in or belonging to such county at large, or in or belonging to any such county of a city, county of a town, borough, or other jurisdiction, indiscriminately, and also from time to time, as often as they shall see fit, by proclamation in open court, to adjourn any such court from the court house or other building wherein they shall then be holding the same to such other court house or building as they may deem convenient, whether in and belonging to such county at large, or within and belonging to such county of a city, county of a town, borough, or other jurisdiction locally situate within or adjacent to the same as aforesaid; and all jurors, prosecutors, witnesses, and other persons who may have been required to appear before the said justices and commissioners in any cause, criminal or civil, shall give attendance before the said justices and commissioners wherever the said court shall be holden as aforesaid, and there shall do all such things as they ought to have done before, and at the courts holden before such justices and commissioners if

this Act had not been made, and in default thereof shall be subject to such and the same penalties and forfeitures for such their default; and all evidence given and all things done at any such court shall be deemed, and in all indictments, pleadings, rules, and entries shall be alleged, to have been given and done respectively within the county at large, or within the county of a city, county of a town, borough, or other jurisdiction (as the case may be) within which such court would have been holden if this Act had not been made: provided always, that nothing herein contained shall authorize the holding of any such court in any place more than three miles distant from the county, city, town, borough, or other jurisdiction for which such court is holden."

Assizes.

Proviso.

Opening of assizes.

The assizes are commenced by the opening and reading of the commission in the presence of one of the quorum commissioners, for which certain days are appointed before the commencement of the circuit at the respective towns, and unless the same shall be prevented the by pressure of business elsewhere, or by some unforeseen cause or accident, such commissions must be opened and read on the very days appointed for that purpose, but if it shall so happen that that is not done on the proper day, it may now be done on the following day, or if the following day be a Sunday or any other day of public rest, then on the succeeding day, but the cause of delay must be certified to the Lord Chancellor under the hand and seal of the quorum commissioner before whom the same were opened and read. (3 Geo. IV., c. 10.) That statute enacts, "That whenever it shall so happen that commissions of assize shall not be opened and read in the presence of one of the quorum commissioners at any place specified for holding the assize on the very day appointed for such purpose, it shall and may be lawful to open and read the same in the presence of one of the quorum commissioners therein named on the following day, or if the following day shall be on a Sunday, or any other day of public rest, then on the succeeding day; and such opening and reading thereof shall be as effectual to all intents and purposes as if the same had been opened and read in the presence of one of the quorum commissioners on the very day appointed for that purpose, and shall be deemed and taken to be an opening and reading thereof on the day for that purpose appointed; and all records and other proceedings under or relating to any commission which may be opened and read by virtue of this Act, shall and may be drawn up, entered, and made out under the same date, and in the same form in all respects as if such commission had been opened and read on the day originally appointed for that purpose: provided always, that the judges and quorum commissioners are hereby directed and required to have such commissions opened and read on the very days appointed for that purpose, unless the same shall be prevented by the pressure of business elsewhere, or by some unforeseen cause or accident."

When not opened, &c. on the day, same may be opened, &c. on following day, &c.

Must be opened on day appointed, if not prevented.

Sect. 2. "In every case in which it shall happen that any such commission shall be opened and read under the provisions of and according to this Act, the quorum commissioner before whom the same shall be opened and read shall, under his hand and seal, certify to the lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, that the said commission was so opened, and the cause of the delay of opening and reading the same, which certificate shall be enrolled in the High Court of Chancery."

Cause of delay to be certified to lord chancellor &c.

As to the holding the assizes in Chester and Wales, see the 1 Will. IV. c. 70.

The 2 Will. IV. c. 47, relates to the holding the assizes in Norfolk and Norwich.

Assizes in Chester and Wales. Assizes in Norfolk.

Stat. 19 Geo. III. c. 74, s. 70, made perpetual by 39 Geo. III. c. 46, reciting "That the courts of assize, *nisi prius*, *oyer* and *terminer*, and gaol delivery, for several counties at large, are often held in or near cities or towns that are counties of themselves, and at the same time with the like courts for the said cities or towns; and inconveniences

Lodgings of judges.

Assizes.

Judges may act in, though out of proper county.

frequently arise in transacting the business of the several courts, for that the lodgings of the judges are situate either only in the county at large, or only in the county of such city or town," enacts, "That whenever the said courts for any county at large in England shall be held in or near any city or town which is also a county of itself, with the like or any of the like courts for the said city or town, the lodgings of the judges shall be construed and taken to be situate both within the county at large, and also within the county of such city or town, for transacting the business of the assizes for such county at large, and for the county of such city or town during the time that such judge or judges shall continue therein for the execution of their several commissions."

Shire-hall, &c.

As to the judges' lodgings and other matters relative to the shire-hall, see the 7 Geo. IV. c. 63, and 2 & 3 Vict. c. 69, *post*, "*Shire-hall*," Vol. V.

Attachment.

Meaning of term.

THIS word, as a law term, we have immediately from the French *attacher*, to tie, or make fast. The Italian word is *attacare*; the Spanish, *attacar*; and the Saxon, *tæcan*, to take.

It signifies the taking of a man's body by commandment of a writ or precept; and is properly grantable in cases of contempts, against which for the most part all courts of record generally, but more especially those of Westminster Hall, and above all, the court of Queen's bench, may proceed in a summary manner, according to their discretion. (2 *Hawk.* c. 22, s. 1; 3 *Step. Com.* 364, 4th ed.)

Power of sessions to award an attachment.

In the case of *R. v. Bartlett*, 2 *Sess. Cas. Ca.* 176, p. 291, it is said that generally the sessions have not a power to award an attachment; but the court said they would not determine how it would have been, if they had committed the person for contempt; but the ordinary and proper method is by indictment.

As each court, however, is in general considered to be a proper judge of its own contempts, (*Crosby's case*, 3 *Wils.* 199,) the court of Queen's bench will not grant an attachment for a contempt to an inferior jurisdiction, but leave it to be punished by that court against which the contempt has been committed. (*R. v. Brownell*, 1 *A. & E.* 598; *R. v. Birchett*, 1 *Str.* 567; 2 *Hawk.* c. 22, s. 2; *R. v. Mile End*, 1 *Ld. Raym.* 676.)

When an order, however, is confirmed by the court above, an attachment lies for non-performance of it; and therefore the court will not take security of the party for performance of it. (*Q. v. Chaffey*, 2 *Ld. Raym.* 588; 1 *Bott.* 472.)

Disobedience to subpoena.

If a witness neglect to obey a subpoena to attend before the grand jury at assizes, on an affidavit that he was material to the prosecutor's case, and was duly served with a subpoena issued from the crown office, the Court of Queen's Bench will grant an attachment against him, on which he may be taken and committed till after the trial of the offender, when an order will be made for his discharge. (*R. v. Ring*, 8 *T. R.* 585; *R. v. Willett*, 6 *T. R.* 295; *R. v. Dixon*, 3 *Burr.* 1687; *R. v. Brownell*, 1 *A. & E.* 598.) So where the witness, a parish officer, refused to give evidence before justices at petty sessions, after he had been served with a subpoena *duces tecum*, which had issued from the crown office, which required him to produce before the justices in petty sessions a rate-book in his custody, in order to its being made evidence of the settlement of a pauper then about to undergo examination, a rule for an attachment against him for his contempt was made absolute. (*Reg. v. Greenaway*, 7 *Q. B.* 126; *Reg. v. Carey*, *ibid.*) But an attachment will not be granted by the Court of Queen's Bench for the contempt

of a subpoena, under the seal of the *Custos Rotulorum*, issued by the court of quarter sessions. (*R. v. Brownell*, 1 A. & E. 598.)

By the 45 Geo. III. c. 92, s. 3, persons served with a crown office subpoena are liable to an attachment for a contempt where the subpoena is served in one part of the United Kingdom to give evidence in another part—the parts signified being England, Scotland, and Ireland, and that Act does not apply to subpoenas issued by the quarter sessions. (*R. v. Brownell*, 1 A. & E. 598.)

See further tit. "Sessions," Vol. V.

A rule *nisi* for an attachment against the governor of a prison was granted by the Court of Exchequer for not permitting process of the court to be served upon a prisoner who was undergoing a criminal sentence, although the governor had refused on the ground that the visiting justices of the prison had made a regulation that no prisoner should be served with civil process while undergoing sentence. (*Dawson v. Le Capelain*, 7 Exch. 667; 21 L. J. Ex. 219.)

Attainder.

Attainder.

THE difference between a man attainted and convicted is, that a man is said to be convicted before he hath judgment, as if a man be convicted by verdict or confession, and when he hath his judgment upon the verdict or confession, then he is said to be attainted. (1 *Inst.* 390 b.)

That is to say, his blood is become (*attinctus*) tainted, stained, or corrupted; insomuch that by the common law, in cases of treason or felony, his children or other kindred cannot inherit his estate, nor his wife claim her dower; and the same cannot be restored or saved but by act of parliament; and therefore, in divers instances, there is a special provision by act of parliament that such or such an attainder shall not work corruption of blood, loss of dower, nor disherison of heirs. (1 *Inst.* 391 b.)

By stat. 54 Geo. III. c. 145, intituled "An Act to take away corruption of blood save in certain cases," it is enacted, "That no attainder for felony which shall take place from and after the passing of this Act, save and except in the cases of the crime of high treason, or of the crimes of petit-treason or murder, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person or persons other than the right or title of the offender or offenders, during his, her, or their natural lives only; and that it shall be lawful to every person or persons, to whom the right or interest of any lands, tenements, or hereditaments, after the death of any such offender or offenders, should or might have appertained if no such attainder had been, to enter into the same."

Attainder abolished in most cases.

As to attainder in general, see 1 *Ch. C. L.* 723 to 742; as to when it ensues (*Id.* 723); the meaning and effect of (*Id.* 725); its consequences in forfeiture of real property (*Id.* 727; *Doe d. Evans v. Evans*, 5 B. & Cres. 584; 8 D. & R. 399, S. C.; *Doe d. Griffiths v. Pritchard*, 5 B. & Adol. 765; 2 Nev. & M. 489, S. C.; *The Earl of Perth*, 2 H. L. C. 44); in forfeiture of personal property (1 *Chitt. C. C. & Id.* 730); in forfeiture of choses in action, see *Bishop v. Curtis*, 21 L. J. Q. B. 391; *Bullock v. Dods*, 2 B. & A. 258; in forfeiture as altered by statutes (*Id.* 733); to what time the forfeiture relates (*Id.* 735); what to be done with the felon's goods (*Id.* 736); of the loss of dower by (*Id.* 738); corruption of blood by (*Id.* 740; *Kynnauld v. Leslie*, 35 L. J. C. P. 226); see also *Deacon*, *Crim. Law. Dig.* tit. "Attainder."

The statute 13 & 14 Vict. c. 60, s. 46, enacts that no lands, stock, or

Attainder of trustee, &c.

Attainder.

Principal offender need no longer be attained before the accessory is proceeded against.

chose in action vested upon any trust or by way of mortgage, shall be forfeited by reason of attainder, or conviction of the trustee or mortgagee, but this exemption is not to extend to any beneficial interest of the trustee or mortgagee. (s. 47.)

By the common law no accessory could be tried until after the principal had been not only convicted, but also attainted, but now by 24 & 25 Vict. c. 94, s. 5, if the principal offender has been in any wise convicted, the accessory may be proceeded against as if the principal felon had been attainted, notwithstanding the principal may die or be pardoned, or otherwise delivered before attainder. See tit. "*Accessory*," ante, p. 28.

As to the plea of *autrefois attain*, see post, "*Autrefois Attain*."

Attempts and Solicitations to commit Crimes.

Solicitations.

AT common law it is a misdemeanour to *incite* another to the commission of any indictable offence, though the solicitation does not succeed; (*R. v. Higgins*, 2 East 5; *Schofield's case*, Cald. 397; and see *R. v. Sutton*, 2 Stra. 1074;) as soliciting a servant to steal his master's goods, or the like. (*Id.*; see *vid. R. v. Collingwood*, 6 Mod. 289.)

But as the offence of an illegal solicitation rests in tendency only, a greater degree of particularity is requisite in the indictment, in stating the manner and means of the solicitation, for by these alone can the defendant's criminality be tried. (1 Stark. C. L. 133.)

To solicit a responsible agent to commit a crime and furnish him with the means of so doing, so that if he commit the crime he would be sole principal felon, and the other an accessory before the fact, is, however, not an attempt to commit the crime in the solicitor. (See *Reg. v. Williams*, 1 Den. C. C. 39.)

It is a misdemeanour to solicit a member of the Privy Council to accept a bribe for the disposal of an office; (*R. v. Vaughan*, 4 Burr. 2494; and see *R. v. Pollman*, 2 Camp. 229; *R. v. Plympton*, 2 Ld. Raym. 1377;) or to offer a bribe to a jurymen; (*Young's case*, cited in 2 East, 14, 16;) or a voter at an election of members of parliament. (4 Burr. 2500; and see post, "*Bribery*," Vol. II.)

Attempts.

It also seems that an attempt to commit a felony is a misdemeanour, and every attempt (not every intention) to commit a misdemeanour is a misdemeanour; (*R. v. Higgins*, 2 East, 8; *Reg. v. Martin*, 9 C. & P. 213, 215;) and an attempt to commit a statutable misdemeanour is as much a misdemeanour as an attempt to commit a common law misdemeanour; (*Schofield's case*, R. & R. C. C. 107, n.; and see *R. v. Butler*, 6 C. & P. 368; *R. v. Roderick*, 7 C. & P. 795;) but a mere intention to commit a misdemeanour is not criminal. Some act is required, but acts only remotely leading towards the commission of a misdemeanour are not to be considered as attempts to commit it whilst acts immediately connected with it are. (*Reg. v. Eagleton*, 1 Dears. C. C. 538; 24 L. J. M. C. 158; *Reg. v. Roberts*, Dears. 539; 25 L. J. M. C. 17.) To obtain credit in account where no further step would be necessary, in order to receive payment if the receipt were not prevented by the discovery of the fraud, is a sufficient act to constitute an attempt to obtain money under false pretences. Where a baker was indicted for attempting to defraud the guardians of the poor of a parish by falsely pretending that he had supplied loaves of bread to the poor under a contract of a larger weight than the true weight, the false statements were made by means of the prisoner returning to the relieving officer tickets for loaves given to paupers, with a written statement that the loaves of the larger weight had been supplied in accordance with the

tickets, whereupon the prisoner obtained credit in the relieving officer's book for the amount, and the money would be paid at the time fixed by contract, he was held guilty of the attempt. (*Ib.*)

And so where a servant by means of the substitution of a false weight in the course of weighing out meat for the supply of soldiers' messes, caused each portion to be less than the proper weight, whereby a surplus of the bulk remained after the weighing was over, which he intended to carry away and appropriate to his own use, but before the surplus was removed the cheat was discovered, he was held guilty of an attempt to steal. (*Reg. v. Cheeseman, L. & C. 140; 31 L. J. M. C. 89.*) It was there said that there was a difference between the preparation antecedent to an offence, and the actual attempt, but that, in that case the actual transaction had commenced.

A man falsely stated to a pawnbroker that a chain was silver, and asked for ten shillings on it. The pawnbroker examined and tested the chain and advanced the money, without placing any reliance on the statement of the prisoner. The fraudulent intent of the man was shewn by other evidence. He was held to have been rightly convicted of the attempt to obtain the money by false pretences. (*Reg. v. Roebuck, Dears. & B. 24; 25 L. J. M. C. 101.*)

Upon an indictment for breaking and entering a certain house with intent to steal certain monies, &c., the conviction was held good of the misdemeanour of attempting to commit the felony charged, where the evidence was that the prisoner was seen upon the roof of the house and taken as he came off from it, and there was found to be a large hole broken in the roof but no appearance of any entry having been effected. (*Reg. v. Bain, L. & C. 129; 31 L. J. M. C. 88.*)

An attempt to commit an offence can only be made out, where, if no interruption had taken place, the attempt could have been carried out successfully, so as to constitute the offence which the accused is charged with attempting to commit. A man cannot attempt to take and carry away goods from a place where no goods are, though he may go to the place with the intent of taking them away. Thus, a person cannot be convicted of attempting to steal from a person by picking his pocket if there was nothing in the pocket; (*Reg. v. Collins, L. & C. 431; 33 L. J. M. C. 177;*) or of attempting to steal goods in a house when no such goods were in the house at the time. (*Reg. v. M'Pherson, Dears. & B. 197; 26 L. J. M. C. 134.*)

An attempt to commit suicide is not an attempt to commit murder within the 24 & 25 Vict. c. 100, and is a misdemeanour over which the quarter sessions has jurisdiction. (*Reg. v. Burgess, 1 L. & C. 258; 32 L. J. M. C. 55.*)

A conviction for attempting to have carnal knowledge of a girl under ten years where she consented to the attempt, is good, though the statute which makes consent immaterial does not mention an attempt. (*Reg. v. Beale, 1 L. R. C. E. 10; 35 L. J. M. C. 60.*)

An attempt to provoke another to send a challenge is a misfeasance. (*R. v. Phillips, 6 East, 464.*)

So is an attempt to suborn a person to commit perjury a misdemeanour. (*Anon. Cald. 400; R. v. Higgins, 2 East, 14.*)

So are all attempts tending to the prejudice of the community indictable. (*Per Lawrence, J., R. v. Higgins, 2 East, 8.*)

Attempts to murder are felonies, and are provided for by statute 24 & 25 Vict. c. 100, ss. 11—15. (See tit. "Malicious Injuries to Persons," Vol. III.) As to attempts to commit other offences, see the title to which the offence belongs.

On a prosecution for a misdemeanour in inciting another to commit felony, it is not necessary for the prosecutor to show negatively that the felony was not completed, in order to sustain the charge for misdemeanour only; but he may leave it for the defendant to show, if he think fit, that the misdemeanour was merged in the greater offence; and

Attempts and Solicitations to commit Crimes.

Attempt to steal.

Attempt to obtain goods by false pretences.

Attempt to break and enter a house with intent to commit a felony.

Attempt to commit suicide.

Attempt to have carnal knowledge of a girl under the age of ten.

Attempts and Solicitations to commit Crimes.

Indictment.

in the absence of such proof, he may be convicted of the solicitation. (See per Lord Mansfield, *Cald.* 400; *R. v. Higgins*, 2 *East*, 8.)

If the indictment charges an attempt to defraud, the nature of the attempt should be set forth. (*Reg. v. Marsh*, 1 *Den. C. C.* 505; 19 *L. J. M. C.* 12.)

Where the charge was an attempt to steal, no specific goods need be mentioned, but it is sufficient to say certain goods of A. B. in the house of A. B. (*Reg. v. Johnson*, 24 *L. J. M. C.* 34.)

By the 14 & 15 Vict. c. 100, s. 9, "If on the trial of any person charged with any felony or misdemeanour, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanour charged in the indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanour for which he was so tried."

Punishment.

The punishment is by fine or imprisonment, or both.

By the 3 Geo. IV. c. 114, the court may sentence a person having attempted to commit felony, to "imprisonment with hard labour, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before this Act."

Costs of prosecution.

The expenses of a prosecution for an attempt to commit a felony are allowed by 7 Geo. IV. c. 64, s. 23; see *post*, "*Costs*," Vol. I.

(1.) Indictment for soliciting a servant to embezzle his master's goods.

— to wit. *THE jurors for our Lady the Queen upon their oath present, that C. D., on the day of , in the year of our Lord at , in the said county, did unlawfully solicit and incite one A. B. [a domestic servant of one E. F.] feloniously to steal, take, and carry away divers, to wit, [six silver spoons,] of the goods and chattels of [his master] the said E. F., and to deliver to him the said C. D. the said [spoons], against the peace of our Lady the Queen, her crown and dignity.*

(2.) Indictment for soliciting a person to commit perjury by swearing a child to an innocent person.

— *THE jurors for our Lady the Queen upon their oath present, that A. B. did on , at , unlawfully and wickedly solicit, instigate, persuade, and procure one E. F. to go before J. P. one of the justices of our Lady the Queen assigned to keep the peace of our said Lady the Queen in and for the said county; and that she the said E. F., in consequence of such solicitation, instigation, persuasion, and procurement, did go in her own proper person before the said J. P. and then and there did, &c. [state the filiation], whereas in truth and in fact he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, then and there well knew that the said C. D. would be put to great charges and expenses of his monies if she the said E. F. would swear as aforesaid, and whereas in truth and in fact he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever to suspect or imagine that the said C. D. was the father of such child, but on the contrary thereof the said A. B. was then and there informed by the said E. F. that he the said A. B. was the father of such child of which she the said E. F. was so pregnant as aforesaid; and whereas in truth and in fact she the said E. F. never told or informed him the said A. B. that the said C. D. was the father of such child, and whereas in truth and in fact he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said E. F. to swear as aforesaid, in order that the said A. B. might be exonerated, freed, and dis-*

charged from divers expenses which might accrue to him as being the father of such child, after the same should be born of the body of her the said E. F., against the peace of our Lady the Queen, her crown and dignity.

Attorney.

Attorney.

AN Attorney is one who is appointed to do any thing in the turn, stead, or place of another. (1 Inst. 51.) Attorney, who.

By the 6 & 7 Vict. c. 73, s. 2, no person shall act as an attorney in any civil or criminal matter before justices of assize, of oyer and terminer, or gaol delivery, or at any general or quarter sessions of the peace, or before any justices of the peace, or before any commissioners of the revenue, unless admitted and enrolled, and qualified to act according to that Act. By the 23 & 24 Vict. c. 127, s. 26, "Every person who acts as an attorney or solicitor contrary to the enactment in s. 2 of the 6 & 7 Vict. c. 73, or who, in his name, or in the name of any other person in anywise acts as a proctor in or with respect to any proceeding in the Court of Probate, or the Court for Divorce and Matrimonial Causes, without being duly qualified so to act, shall be deemed guilty of a contempt of the court in which the action, suit, cause, matter, or proceeding in relation to which he so acts is brought, had, or taken, and may be punished accordingly." Unqualified persons must not act,

A person may be indicted for acting as an attorney when not admitted or enrolled contrary to the 2nd section of 6 & 7 Vict. c. 73, (*R. v. Buchanan*, 8 Q. B. 883; 15 L. J. Q. B. 227,) where the indictment was for acting as attorney in an appeal at quarter sessions. But by the 7 & 8 Vict. c. 101, s. 68, clerks and officers may conduct proceedings before justices at petty sessions on behalf of a board of guardians, although not attorneys or certificated. except for board of guardians.

By the 6 & 7 Vict. c. 73, s. 33, "No attorney or solicitor shall be capable to continue or be a justice of the peace for any county within that part of Great Britain called England, or the principality of Wales, during such time as he shall continue in the business and practice of an attorney or solicitor." Cannot be justices,

But by sect. 34 it is provided, "that the prohibition last hereinbefore contained shall not extend, or be construed to extend, to any city or town being a county of itself, or to any city, town, cinque port, or liberty having justices of the peace within their respective limits and precincts by charter, commission, or otherwise, but that in every such city, town, liberty, and place, attorneys or solicitors may be capable of being justices of the peace, and in such manner only as they might have been if this Act had never been made, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding." except in some places.

An attorney cannot be a master, or (in general) clerk, or messenger to a master, of the superior courts; (7 Will. IV. & 1 Vict. c. 30, s. 15;) nor can he be a commissioner of the land-tax, unless he possesses one hundred pounds per annum. (30 Geo. II. c. 3, s. 87, &c.) Cannot be a master or commissioner of land-tax, &c.

It may be as well to add, that the statutes of 1 Hen. V. c. 4, and 22 Geo. II. c. 46, are repealed, which provided that no attorney whilst under-sheriff, or holding various minor offices, should practise in the Queen's courts or at quarter sessions. May be under-sheriff, &c.

Attornies are exempted from serving all offices where personal service is required, even although imposed by Act of Parliament, and in the most comprehensive terms; (*Gerard's case*, 2 W. Bl. 1126; such as the offices of constable; (*R. v. Routledge*, 2 Doug. 538; *Gerard's case*, 2 W. Bl. 1126; 5 & 6 Vict. c. 109, s. 6;) overseers of the poor; (*Gerard's case*, 2 W. Bl. 1126; *Ex parte Jefferies*, 6 Bing. 195;) or tythingman, offices under the commissioners of sewers, collectors of subsidies, watch Exempt from serving certain offices.

Attorney.

Perjury by
attorney.

and ward, &c.; (*Gerard's case*, 2 *W. Bl.* 1126;) and corporation offices, such as sheriffs, &c., even although the attorney be resident in the corporation town. (*Mayor of Norwich v. Berry*, 1 *W. Bl.* 636; 4 *Burr.* 2109, *S. C.*) But they are not privileged from being balloted for the militia, for they can pay for substitutes. (*Gerard's case*, 2 *W. Bl.* 1126; see *Evinson's case*, 2 *Str.* 1143, *contra*.)

By the 12 Geo. I., c. 29, (made perpetual by 6 Geo. II. c. 14, and 21 Geo. II. c. 3, "If any person who hath been, or who shall be convicted of forgery, or of wilful and corrupt perjury, or subornation of perjury, or common barrettry, shall act or practise as an attorney in any court of law or equity within that part of Great Britain called England, the judge or judges of the court where such suit or action is or shall be brought, shall, upon complaint or information thereof, examine the matter in a summary way in open court; and if it shall appear to the satisfaction of such judge or judges that the person complained of, or against whom such information shall be given, hath offended, contrary to this Act, such judge or judges shall cause such offender to be transported for seven years, to some one of Her Majesty's colonies or plantations in America, by such ways, means, and methods, and in such manner and under such pains and penalties as felons in other cases are by law to be transported." By 16 & 17 Vict. c. 99, penal servitude is substituted for transportation.

May lay com-
plaint before
justices.

By 11 & 12 Vict. c. 43, s. 10, "Every complaint or information for any offence punishable on summary conviction within that Act may be laid or made by the complainant or informant in person by his counsel or attorney, or other person authorized in that behalf."

Attendance
before justices
and at sessions.

As to his right to attend at sessions or before magistrates, see *post*, "*Convictions*," "*Sessions*," Vol. V. As to his privilege in not answering questions, see *post*, "*Evidence*," Vol. II. As to embezzlement by, see "*Larceny*," Vol. III.

(1.) Form of
indictment
against a person
for acting as
attorney in an
appeal at quarter
sessions without
being admitted
and enrolled,
contrary to 6 & 7
Vict. c. 73, s. 2.

— THE jurors for our Lady the Queen upon their oath present, that on the _____ day of _____ A.D. _____, and after the passing and coming into operation of a certain statute passed at a session of Parliament holden in the sixth and seventh years of the reign of her present Majesty, intituled an "Act for Consolidating and Amending several of the Laws relating to Attornies and Solicitors practising in England and Wales," one A. B., of _____, not regarding the said statute, did, at a general quarter sessions of the peace, holden in and for the county of _____ on the _____ day of _____ at _____ in the said county of _____, before C. D. and E. F. and others, justices of the peace of our Lady the Queen of and for the said county, assigned to keep the peace of our said Lady the Queen in and for the said county, and to hear and determine divers felonies, trespasses and other misdemeanours in the said county committed, did unlawfully act as an attorney in a certain civil cause which then in due form of law came on to be heard at the said sessions, to wit, a cause wherein the churchwardens and overseers of the poor of the parish of _____ in the county of _____, were appellants, and the churchwardens and overseers of the poor of the parish of _____ in the said county of _____ were respondents, and did then and there act as an attorney for the said appellants; and did then and there as such attorney retain, employ, and instruct counsel, to wit, Y. Z. Esquire, to conduct the said appeal on behalf of the said appellants, he, the said A. B., not having been previously to the passing of the said Act, admitted or enrolled or otherwise duly qualified to act as an attorney or solicitor under or by virtue of any laws in force at the time of the passing of the said Act, nor was the said A. B. then admitted and enrolled or otherwise qualified to act as such attorney as aforesaid at any time since the passing of the said Act, pursuant to the directions and regulations of the said statute, nor was the said A. B. at the time of his so acting as aforesaid in the capacity of an attorney as aforesaid duly qualified to act in manner aforesaid, and on the roll of attornies within the meaning of the said Act contrary to the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

Autrefois acquit.

[14 & 15 Vict. c. 100.]

THIS is a plea in bar by a person indicted of an offence, that he has been heretofore lawfully acquitted of the same offence, and is based on the principle that a man ought not to be placed in jeopardy twice in respect of the same offence. (See 1 *Ohitt. Cr. L.* 452; 4 *Co.* 40; 3 *Inst.* 213.) What.

When pleadable.—To support a plea of *autrefois acquit* it must appear that the prisoner could have been lawfully convicted upon any evidence that might have been adduced on the trial of the first indictment for the offence charged in the second, and that the offence charged in the former indictment was the same identical offence with that charged in the indictment pleaded to. (*R. v. Bird*, 2 *Den. C. C.* 94; *K. v. Sheen*, 2 *C. & P.* 634; *R. v. Clarke*, 1 *Brod. & B.* 473.) A criterion is, whether the evidence necessary to support the second indictment would have been sufficient to have procured a conviction on the first. (See *R. v. Embden*, 9 *East*, 437.) When pleadable.

The indictment upon the first trial must have been such that judgment was or might have been lawfully passed upon the prisoner; (*Vaux's case*, 2 *Co. pt.* 4-45 a, p. 400;) but though the indictment was insufficient in point of law, yet if, after verdict, judgment was passed until it was reversed by writ of error, or upon a case reserved, he could not be indicted again in respect of the same offence. (*Vaux's case*, *ubi sup.*; 2 *Inst.* 318; 2 *Hale*, 247.) So a person cannot plead his acquittal on a prior indictment, who, by reason of some defect or insufficiency in the record, either in the indictment, place of trial, process, or the like, is not lawfully liable to suffer judgment for the offence charged on that proceeding, (*Reg. v. Drury*, 3 *Car. & K.* 199; *Vaux's case*, *ubi sup.*) or upon whom, although there has been a good indictment, issue well joined, a trial completely had, and a lawful verdict found, lawful judgment is not and cannot be passed—for upon a record without a judgment no punishment can be suffered, and where a judgment, passing sentence for a longer period of time than the law statute permitted, has been reversed on a writ of error, such a judgment is as no judgment, and no other judgment can be passed upon that record, for neither the Court of Queen's Bench nor the court below could pronounce any judgment on it. The former would never have had the power, and the latter was *functus officio*. (*R. v. Drury*, 3 *Car. & Kir.* 193; 2 *Hale P. C.* 243-251; *Vaux's case*, *ubi sup.*; *Wigg's case*, 2 *Co.* 403, pt. 4-45 b; *R. v. Bourne*, 7 *A. & E.* 58.)

Where the first count of an indictment charged the prisoners with having in their possession a mould intended to impress the stamp of the reverse side of a shilling; the second stated, that the mould was intended to impress the obverse side; the third stated, that it was intended to impress *part or parts* of the reverse side; and the fourth stated the same as to the obverse side; a general verdict of guilty having been recorded, a motion was made in arrest of judgment, on the ground that the two last counts were bad for uncertainty, whereupon the judge directed another indictment to be preferred. The second indictment contained the two first counts of the previous one, a third and fourth stated that the mould was intended to impress parts of the obverse and parts of the reverse sides; a fifth and sixth used the word "part" instead of "parts." The prisoner pleaded *autrefois convict*. The twelve judges decided that the plea was bad, and confirmed the second conviction. (*R. v. Phillips*, 1 *Jurist*, 427.) And see a case where there was a misstatement of the king's reign. (*R. v. Taylor*, *post*, p. 352.)

Autrefois acquit.

An abortive trial without verdict cannot be pleaded as an acquittal; thus, if, after the jury are sworn, and the prisoner given in charge to them, the judge, in order to prevent a failure of justice by the refusal of a witness to give his evidence, or by reason of the non-agreement of the jury to a verdict, or by reason of the death or such illness of a jurymen as to necessitate the discharge of the jury before verdict, does so discharge them without coming to a verdict. (*Reg. v. Winsor*, 1 *L. R. Q. B.* 289, 390; 35 *L. J. M. C.* 121; *Reg. v. Charlesworth*, 1 *B. & S.* 460; 31 *L. J. M. C.* 25; *Conway v. Lynch*, 7 *Ir. Law Rep.* 149, per *Crampton*, J.)

The same offence.

If the charge be in truth the same, though the indictments differ in immaterial circumstances, the defendant may plead his previous acquittal with proper averments; for it would be absurd to suppose that by varying the day, parish, or any other allegation, the precise accuracy of which is not material, the prosecutor could change the right of the defendant, and subject him to a second trial. (*Keilw.* 58; 1 *Leach*, 448; *R. v. Embden*, 9 *East*, 437.) Thus, as to the point of time, if he be indicted for a murder as committed on a certain day and acquitted, and afterwards be charged with killing the same person on a different day, he may plead the former acquittal in bar notwithstanding this difference, for the day is not material; and this is a fact which could not be twice committed. (2 *Hale*, 179, 244; 2 *Hawk.* c. 35.) But if the description of a person killed in two distinct indictments for murder or manslaughter be different, proof that the same person was intended would support the plea. (2 *Hale*, 244.) And the same rule applies to accusations of other felonies, for though it is possible for several acts of the same kind to be committed at different times by the same person, it lies in *avermant*, and the party indicted may show that the same charge is intended. (2 *Hale*, 179, 244; 2 *Hawk.* c. 35.) So if a person has been once acquitted or convicted of the larceny or embezzlement of a sum of money, and be again indicted for the larceny or embezzlement of a smaller sum, though no specific sum be mentioned in either indictment, he may plead his former acquittal, and aver the identity. (See *Reg. v. Moah*, 1 *Dears. C. C.* 631; per *Cresswell*, J.; 25 *L. J. M. C.* 66.)

Four persons were tried for a rape, upon an indictment containing counts charging each as principal and the others as aiders and abettors. They were acquitted; and it being proposed on the following day to try three of them for another rape upon the same person (the second indictment being exactly the same as the first, with the omission only of the fourth prisoner), they pleaded *autrefois acquit* to the second indictment, averring the identity of the offences, and to this plea there was a replication that the offences were different. The prisoners' counsel put in the commitment and the former indictment, and also the minutes of the former acquittal written on the indictment. On this evidence the jury found that the offences were the same; and it being referred for the opinion of the judges, whether there was any evidence to justify and support the verdict, and if not, whether such verdict was final, and operated as a bar to any further proceedings by the Crown—upon the second indictment their lordships held that the verdict of the jury was final, and the prisoners were discharged. (*R. v. Parry*, 7 *Car. & P.* 836.)

The powers of amendment given by statute for the support of indictments do not place the prisoner in jeopardy upon an insufficient indictment without amendment unless exercised; and, therefore, if a prisoner had been acquitted upon an indictment for larceny, in which the property in the goods stolen was laid in the wrong person, and not amended, he cannot plead *autrefois acquit* to a subsequent indictment against him for stealing the same goods, being the property in a different person. (*Reg. v. Green*, *D. & B.* 113; 26 *L. J. M. C.* 17.)

If local description is essential to the offence, as in cases of arson of a

dwelling-house, and other cases which are collected in *Taylor on Evidence*, a variance between the two indictments in such a matter will render the plea ineffectual, for either the first indictment was of no effect, and therefore the acquittal of no avail, or the second not applicable to the evidence, and therefore the objection is needless, (2 *Hale*, 245.)

Where the defendant was formerly indicted for forging a will, which was set out in the indictment thus: "*I John Styles,*" &c., and was acquitted for variance, the will given in evidence commencing "*John Styles,*" without the "*I,*" it was holden that he could not plead this acquittal in bar of another indictment, reciting the will correctly, "*John Styles.*" (*R. v. Cogan*, 2 *Leach*, 503.)

An insolvent debtor, acquitted on a former indictment for omitting goods from his schedule, may be again indicted for omitting other goods not specified in the former indictment, but such a course ought not to be taken except under very peculiar circumstances. (*R. v. Champneys*, 2 *M. & Rob.* 26.)

An acquittal upon an indictment for burglary and larceny may be pleaded to an indictment for larceny of the same goods; because, upon the former indictment, the defendant might have been convicted of the larceny. But if the first indictment were for a burglary, with intent to commit a larceny, and did not charge an actual larceny, an acquittal on it would not be a bar to a subsequent indictment for the larceny; (see 2 *Hale*, 245;) and, *e converso*, if the first indictment charged a burglary and larceny, an acquittal thereon would be no defence to a subsequent indictment for burglary with intent to commit larceny. (*Vandercomb's Ca.* 2 *Leach*, 72; *Reg. v. M'Pherson*, *D. & B.* 197; 26 *L. J. M. C.* 134.)

So an acquittal upon an indictment for murder may be pleaded in bar of another indictment for manslaughter; (*Fost.* 329; 2 *Hale*, 246;) because the defendant might be convicted of the manslaughter on the first indictment. (*R. v. Jones*, 2 *B. & Ad.* 611.)

And if a party charged with the crime of murder committed in the perpetration of a burglary be generally acquitted on that indictment, he could not afterwards have been convicted of the burglary with violence, under the 7 Will. IV. & 1 Vict. c. 86, s. 2, (now repealed,) as the general acquittal on the charge of murder would be an answer to that part of the indictment containing the allegation of violence. (*Reg. v. Gould*, 9 *Car. & P.* 364.)

So an acquittal upon an indictment for manslaughter is, it seems, a bar to an indictment for murder. (*Fost.* 329; *Wigge's Case*, 2 *Co.* 403, p. 4-45 b.)

Now if upon the trial of any person indicted for embezzlement or fraudulent application or disposition of property within 24 & 25 Vict. c. 96, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement or fraudulent application or disposition, but is guilty of simple larceny, or of larceny as a clerk or servant, or as a person employed in the public service, or in the police, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question, in any such manner as to amount in law to embezzlement, or fraudulent application or disposition as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, or fraudulent application or disposition, as the case may be, and thereupon such person shall be liable to be punished

*Autrefois
acquit.*

No person tried
for embezzlement
or fraudulent
disposition to
be afterwards
tried for larceny
and vice versa.

Autrefois acquit.

False pretences
and larceny, and
vice versa.

in the same manner as if he had been convicted upon an indictment for such embezzlement, or fraudulent application or disposition, and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition, or embezzlement upon the same facts. (24 & 25 Vict. c. 96, s. 72; see *Reg. v. Gorbitt*, 26 L. J. M. C. 47; *Reg. v. Betts*, 28 L. J. M. C. 69.)

At common law an acquittal upon an indictment for a felony is no bar to an indictment for a misdemeanour, and *e converso*. (2 *Hawk. c.* 35, s. 5; *Reg. v. Bird*, 2 Den. C. C. 94.) And an acquittal of an offence charged as a larceny cannot be pleaded in bar to an indictment for the same offence charged as a false pretence; (*Reg. v. Henderson*, 1 Car. & M. 328;) but by 24 & 25 Vict. c. 96, s. 88, a person indicted under that section for the misdemeanour of obtaining money, &c., by false pretences, shall not be entitled to be acquitted if it shall be proved that he obtained the property in question in such a manner as to have amounted to larceny, and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for larceny upon the same facts; and by 14 & 15 Vict. c. 100, s. 12, if upon the trial of any person for any misdemeanour it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for felony on the same facts unless the court before which such trial may be had shall think fit in its discretion to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanour.

Conviction of
attempt to
commit offence
charged.

By the 14 & 15 Vict. c. 100, s. 9, if upon the trial of any person charged with any felony or misdemeanour it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanour charged in the said indictment, and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanour for which he was so tried.

Accessaries.

An acquittal as accessary was no bar to an indictment as principal, and *e converso*. (2 *Hale*, 244; *Fost.* 361; 2 *Hawk. c.* 35, s. 11; *Rea v. Plant*, 7 C. & P. 575; *Reg. v. Birthenough*, 1 Moo. C. C. 77.) By 24 & 25 Vict. c. 94, s. 7, it is enacted that "no person who shall be once duly tried either as an accessary before or after the fact, or for a substantive felony under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence." The provisions thereinbefore contained related to cases of felony. (See tit. "*Accessary*," ante, p. 29.)

Nature of
acquittal.

As to the sufficiency of the discharge, which may be thus pleaded, it must be a legal acquittal by judgment upon trial, by verdict of a petty jury. (2 *Hale*, 243, 6; 2 *Hawk. c.* 35, s. 6.)

The finding of
no true bill
by the grand
jury not an
acquittal.

And therefore, if a man be committed for a crime, and no bill be preferred against him, or if it be thrown out by the grand jury, so that he is discharged by proclamation, he is still liable to be indicted. (*Id.*)

So if the facts be found specially by the coroner's inquest or grand jury, and he be thereupon discharged, he cannot plead it in bar to any subsequent prosecution; but if the special verdict be found by the

petit jury, and judgment be given by the court "that he go thereof without day," this will amount to a sufficient acquittal. (*Id.*)

Although it was formerly thought that no acquittal in any other court could be effectually pleaded in bar to a prosecution in the Court of Queen's Bench, it is now settled that a legal acquittal in any court whatsoever, having competent jurisdiction to try the charge, will be sufficient to preclude any subsequent proceedings before every other tribunal. (1 *Leach*, 135, n. a.)

And it may be here observed, that a party found guilty by a jury at a sessions irregularly holden, is entitled to have the record of the proceedings regularly made up according to the fact, and the Court of Queen's Bench will grant a *mandamus* to the justices to make up such record; (*R. v. The Justices of Middlesex, In re Bowman*, 3 *Neb. & M.* 110; 5 *B. & Ad.* 1113;) and the court will postpone the trial of the prisoner to enable him to apply for such *mandamus*; (*R. v. Bowman*, 6 *C. & P.* 101;) though the record when made up would not support the plea of *autrefois convict*. (*Ibid.* 5 *B. & A.* 1116; 6 *C. & P.* 337.) The prisoner would, it is conceived, have the same right on a plea of *autrefois acquit*.

Similar in character to the plea of *autrefois acquit* is a plea of a certificate obtained from two justices of the dismissal of a complaint for an assault before them for the same cause. This answer in bar was given by the 9 Geo. IV. c. 31, s. 27, and following sections, which are now repealed, but re-enacted so far as those sections are concerned by the 24 & 25 Vict. c. 100, ss. 42, 44, 45, 46. The certificate must show that it was given on one of the three occasions allowed by the statute. (*Skuse v. Davies*, 10 *A. & E.* 635.) And it was before the latter statute enacted by the 11 & 12 Vict. c. 43, s. 14, that if the justice or justices, after hearing the complaint or information in cases punishable upon summary conviction within that Act, shall dismiss such information and complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same, and shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party.

The certificate under 24 & 25 Vict. c. 100, should be given *forthwith* after the dismissal. Where the dismissal took place on the 29th of November, and the certificate was not made out till the following 29th of January, and an indictment had been found against the defendant on the 9th of the same January, the certificate was held not to have been made out *forthwith*, and the defendant held not to be entitled to the statutory protection; (*Reg. v. Robinson*, 12 *A. & E.* 672;) but a certificate of the dismissal ordered to be made out by the magistrate before the next case was called on, though after the parties had left the court, and without any application for it, and sent to the defendant the next day, was held to be given in time. (*Hancock v. Somes*, 1 *E. & E.* 795; 28 *L. J. M. C.* 196.)

It is not necessary that the certificate should be made out before the bill is found on the subsequent charge.

And inasmuch as the granting the certificate is not in the nature of a judicial but a ministerial act, the expression *forthwith* is directory, and so far the case of *Reg. v. Robinson* (*ubi sup.*) may be said to be overruled by the cases of *Hancock v. Somes*, and *Costar v. Hetherington* (*infra*).

Where the summons was heard on the 17th of February and dismissed, and a writ in an action for the same assault issued the next day, and was served on the 19th, an application made for the certificate on the 24th, which was then made out and dated the 17th, was held to be a good bar. (*Costar v. Hetherington*, 1 *E. & E.* 802; 28 *L. J. M. C.* 188.) The certificate is demandable *ex debito justitiæ*, and the magis-

Autrefois acquit.

Where acquitted at a sessions irregularly holden.

Plea of previous dismissal before a magistrate on a charge of assault.

In cases of summary convictions and acquittals.

Forthwith.

Autrefois acquit.

What is a hearing.

trate cannot refuse it, and in case of refusal, the court would grant a *mandamus* to compel him to grant it forthwith. (*Id.*)

Before the last statute, (24 & 25 Vict. c. 100,) it was held that it was a sufficient hearing to entitle the defendant to a certificate of dismissal of complaint, if, at the time and place appointed by the summons, the complainant did not appear, and therefore no evidence was gone into, although the complainant had given the defendant notice previously to the hearing not to attend. (*Bradshaw v. Vaughton*, 9 C. B. N. S. 103; 30 L. J. C. P. 93.) And the same was held when, upon the case being called on, the complainant stated that he should withdraw from the case and bring an action, and accordingly no evidence was offered. (*Tunnickliffe v. Tedd*, 5 C. B. 553; 17 L. J. M. C. 67.) But the new statute enacts that the certificate shall be made out after the dismissal, upon a hearing "*upon the merits*," where the complaint was preferred by or on behalf of the party aggrieved. And it is apprehended that the introduction of these words will, in the cases where they apply, nullify the two decisions quoted above, for in neither of those cases could it be for a moment said that the merits were gone into. A certificate of dismissal will be in general pleadable whenever, if a conviction had taken place, that would have been pleadable. (See "*Assault*," ante, p. 319, "*Autrefois Convict*," post, p. 356.) An acquittal by justices on a complaint of a common assault is a bar to an indictment for felonious wounding with intent to maim or disable on the same facts. (*R. v. Walker*, 2 Moo. & R. 446; see tit. "*Autrefois Convict*," post, p. 357.)

Certificate pleadable, when.

Form and requisites of plea.

Form of Plea.—This plea is of a mixed nature, and consists partly of matter of record, and partly of matter of fact. (2 Hale, 241, 255; 2 Hawk. c. 35.)

Before the 14 & 15 Vict. c. 100, s. 28 (*infra*), it was requisite to set forth in the plea the record of the former acquittal, or it would be bad on demurrer. (*R. v. Wildey*, 1 M. & Sel. 188; 2 Hale, 241.) But it is not necessary to produce the record immediately, because it is pleaded in bar, and he who pleads it hath neither the custody nor property in the record. (2 Hawk. c. 37, s. 65.)

If, in a plea of *autrefois acquit*, the prisoner were to insist on two distinct records of acquittal, his plea would be bad for duplicity; but *semble*, that if he insisted on the wrong, the court would, in a capital case, take care that he did not suffer by it. (*R. v. Sheen*, 2 C. & P. 634; and see *R. v. Chamberlain*, 6 C. & P. 98, *infra*.) The two records in the former case were the record of acquittal of murder upon the former indictment and the record of acquittal on the coroner's inquisition.

After the statement of the record of acquittal, the matter of fact of the plea must be stated, viz., that the charges and persons are the same which were included in the former prosecution. (1 Hale, 255, 392.) Where the variance between the indictments is not material, the identity may be maintained by averments; and the same observation applies to an immaterial difference in the addition of the party indicted. (*Keilw.* 58; ante, 348.)

An indictment charged that the defendant on such a day in the second year of the reign of the *present King* kept a gaming-house. Plea, that on such a day in the fourth year of the reign of the present King, the defendant was arraigned upon an indictment, which charged that the defendant, on the 18th of January, in the fifty-seventh year of the reign of the *late King*, and on divers others days and times between that day and the day of taking that inquisition, kept a gaming-house, &c. The plea then averred the identity of the offence stated in the two indictments, and the acquittal of the defendant. Upon demurrer to this plea, concluding with a prayer of judgment of *respondeas ouster*, it was held that the plea was bad, because the indictment upon which the acquittal was alleged to have taken place, on the face of it, charged an

offence committed in the reign of the *late King*; and it was not competent to the defendant to show, by averment, that it was for the same offence as that charged in the indictment before the court, for that would, in effect, be to contradict the record. It was also held, that the Crown was entitled to final judgment, notwithstanding the form in which the demurrer concluded. (*R. v. Taylor*, 3 B. & C. 502; 5 D. & R. 422.)

The plea concludes with a verification and prayer that the defendant may be dismissed the court without further day. (2 *Hale*, 392; 2 *Leach*, 715.)

The plea ought properly to be on parchment, signed by counsel; (*R. v. Sheen*, *ubi sup.*;) the court, however, will not reject the plea because it is informal, but will assign counsel to prepare it in a proper form for the defendant. (*R. v. Chamberlain*, 6 C. & P. 93.)

In *R. v. Walker*, 2 Moo. & R. 446, the plea was tendered *ore tenus*; but Parke, B., ordered it to be put on parchment; a demurrer to it was subsequently tendered by the Crown *ore tenus*; but the judge ordered that also to be put on parchment. Joinder of demurrer was, however, allowed *ore tenus*, on the authority of *R. v. Sheen*, 2 C. & P. 634.

An amendment in the plea was allowed after it had been put in on parchment, and time was given to the Crown to decide upon whether the prosecution would demur or traverse. (*Id.*)

If the indictment be for treason or felony, the plea should conclude with pleading over to the felony, and, in strictness, without such plea, the defendant would be left without defence if judgment were given against him on the plea of *autrefois acquit*, and such judgment would be final. (*R. v. Drury*, 3 C. & K. 190.)

In *Vandercomb and Abbott's case*, (2 *Leach*, 712,) the court considered that it was absolutely necessary for the prisoner to plead over to the felony at the same time that he pleads his plea of *autrefois acquit*. But in *R. v. Sheen*, (2 C. & P. 634,) the prisoner merely pleaded his plea of *autrefois acquit*, without pleading over to the felony; and it is laid down in 2 *Curw. Hawk.* c. 23, s. 128, that a prisoner may still plead "not guilty" after his special plea is found against him; and in the case of *R. v. Welch*, (*Cur. C. L.* 56, O. B. 1828,) the prisoner pleaded *autrefois acquit* to a charge of felony, without also pleading over to the felony: judgment was given against him on this plea; and he after that pleaded "not guilty," and was tried and convicted.

By 14 & 15 Vict. c. 100, s. 28, "In any plea of *autrefois acquit*, it shall be sufficient for any defendant to state that he has been lawfully acquitted of the said offence charged in the indictment."

Like the plea of *autrefois acquit*, the plea of a certificate of dismissal of a complaint for the same assault before justices must be pleaded on parchment, and signed by counsel. (*R. v. Walker*, 2 Moo. & R. 446.) It must be specially pleaded, for the statute gives no power to take advantage of it under the general issue. (*Harding v. King*, 6 C. & P. 427.)

The certificate of dismissal must be set out in the plea, in order to show that it is a regular and legal certificate, and given on a proper occasion. (*Skuse v. Davis*, 10 A. & E. 635.)

In consequence of the general form of plea now allowed by statute, the record of the previous acquittal need not be set forth, and therefore a demurrer to such plea is not likely to occur; but previously, if the record of acquittal appeared on the face of it to be no answer to the indictment, the question could be raised by demurrer. (*R. v. Drury*, 3 C. & K. 190.)

If the fact of the acquittal be now disputed, the replication may traverse the acquittal, and any objection to the record must arise on the evidence.

The joinder in demurrer was allowed to be *ore tenus*, although the

Autrefois acquit.

Should be on parchment, &c.

Pleading over to the felony.

Form of plea of certificate of dismissal before justices.

Demurrer.

And joinder.

*Autrefois
acquit.*

demurrer to the plea was required to be on parchment. (*R. v. Walker*, 2 Moo. & R. 446.)

Replication.

Replication.—The replication may, if the fact of acquittal be disputed, either take issue upon the averments of identity, or aver *nul tiel record*. (2 Hale, 255.)

In *Vandercomb and Abbott*, (2 Leach, 715, (n.)) the counsel for the Crown wished to reply *ore tenus* to the plea of *autrefois acquit*, "but the prisoner's counsel insisted that the replication must be on parchment, for that only the attorney-general could make such a replication *ore tenus*; and the court said that it must be on parchment, for otherwise the parties would not have equal justice, as, by its being pleaded *ore tenus*, the prisoners would be deprived of the opportunity of taking advantage of any defect there might happen to be in the form of the replication. (See also *Reg. v. Walker*, 2 Moo. & R. 450.) However, in the case of *R. v. Sheen*, (2 C. & P. 635,) the counsel for the prosecution replied *ore tenus*, although the plea was on parchment; but he repeated the words of the replication (from notes) so slowly that they were written down by the learned judge. (*Car. C. L.* 56.)

The replication concludes to the country, and no day is given to bring in the record, as in civil actions: because in criminal cases there can be no trial by the record—it must be by jury only. (*Arch. C. Pl.* 13 ed. 121.)

Evidence.

Evidence.—The proof of the issue lies on the defendant. The evidence necessary to prove the plea consists partly of matter of record and partly of matter of fact. (2 Hale, 241, 255; 2 Hawk. c. 35.) It is not necessary to produce the record of the former trial and acquittal, or a copy thereof, but a paper certified, or purporting so to be, by the clerk of the court, &c., to be a copy of the record of the indictment, trial, conviction, and judgment, or acquittal, as the case may be, omitting the formal parts. (14 & 15 Vict. c. 99, s. 13.) Before that statute, the record must have been made up, and itself produced, or an examined copy of the whole of it given in evidence. (*R. v. Smith*, 8 B. & C. 341; *R. v. Bowman*, 7 C. & P. 101, 337.) But when the second indictment is preferred before the same court, sitting under the same commission, a minute of the former proceeding will be admitted, because the formal record cannot be supposed to be made up. (*R. v. Tooke*, 26 How. St. Tr. 446–449; *R. v. The Justices of Middlesex*, 5 B. & Ad. 1113.) As has been stated, a duly certified copy of the material, omitting the merely formal, parts of the record, is now sufficient. But if it is thought advisable to have the whole record, the court would grant a *mandamus* to the sessions to compel them to make up the record of their proceedings. Any variance between the record of the former trial and the subsequent indictment may be reconciled by evidence proving the offences to be the same, or included the one in the other, and by showing that the variance arose from immaterial averments in the former one, or that the evidence necessary to prove an offence under the latter indictment would have satisfied the former; but if it appeared to the court, on looking at the two indictments, that the offences charged in them cannot be the same, no evidence can be admitted to contradict either record. (*R. v. Taylor*, 3 B. & C. 507.)

Production of
record.

Where no evi-
dence offered on
former trial.

If the acquittal took place because no evidence was offered, though it is still an acquittal entitling the prisoner to an exemption from any subsequent trial for the same identical offence, there is more difficulty in identifying the offence; but it may be proved by the witnesses who were subpoenaed to go, and went before the grand jury, by the proof of what they then swore, or perhaps by a grand jurymen himself, or by the evidence of the prosecutor, or by proof how the case was opened by the counsel for him: in short, any evidence which would show what was the subject of the enquiry, and identify the charge, and limit and

confine the generality of the indictment to a particular case. (*R. v. Birds*, 5 Cox C. C. 11, per Parke, B.) In that case the junior counsel at the first trial was examined to show from his notes what the evidence was which was then given.

Autrefois acquit.

Addressing Jury.—If in the replication the prosecutor take issue on a fact averred in a plea of *autrefois acquit*, the counsel on both sides address the jury. (*R. v. Sheen*, 2 C. & P. 653.) And the counsel for the accused has the right to begin. (*R. v. Parry*, 7 C. & P. 836.)

Addressing jury.

Judgment.—In case of *felony*, if the plea be held bad, the judgment is *respondere ouster*; or rather, as the defendant generally pleads over to the felony, the jury are charged again, and that at the same time with the issue on the plea of *autrefois acquit*, to inquire of the second issue, and the trial proceeds as if no plea in bar had been pleaded. (1 *Leach*, 134.)

Judgment.

In case of *misdemeanours*, as the defendant cannot also plead over, the judgment upon a plea of *autrefois acquit*, which is in bar, whether it be on demurrer to the same, or on issue joined, is final, and sentence will be pronounced against the defendant. (2 *Ld. Raym.* 922; *R. v. Taylor*, 3 B. & Cres. 502; 5 D. & R. 422, *ante*, p. 352.)

When, on the other hand, the plea is allowed, the judgment is, that “he shall go without day,” and he is altogether discharged from the prosecution. (2 *Hale*, 391.)

A verdict for the prisoner cannot be set aside and a new trial had, although without evidence and against the opinion of the judge. (*R. v. Lea*, 2 Moo. C. C. 9.)

And the said C. D. in his own proper person comes into court here, and having heard the said indictment read says, that our said Lady the Queen ought not further to prosecute the said indictment against the said C. D., because he says that heretofore, to wit, on the day of at the general quarter sessions of the peace, holden at, in, and for the county of , he the said C. D. was lawfully acquitted of the said offence charged in the said indictment. And this he the said C. D. is ready to verify, wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the present indictment specified. And as to the felony and larceny of which he the said C. D. now stands indicted, he the said C. D. says that he is not guilty thereof, and of this the said C. D. puts himself upon the country, &c.

(1.) Plea of *autrefois acquit*, under 14 & 15 Vict. c. 100, s. 28.

Plea over to felony.

And the said C. D., in his own proper person, comes into court here, and having heard the said indictment read, saith, that our said Lady the Queen ought not further to prosecute the said indictment against the said C. D.; because he says that heretofore, to wit, [at the general quarter sessions of the peace, holden at so continuing the caption of the former indictment,] it was presented that the said C. D. (then and there, and thereby described as C. D., late of , in the county aforesaid, labourer,) on the day of, &c., [continuing the indictment to the end; reciting it however in the past, and not in the present tense. Recite also the remainder of the record to the end of the judgment, in the past tense, in like manner. Then proceed thus:] as by the record thereof more fully and at large appears; which said judgment still remains in full force and effect, and not in the least reversed or made void: And the said C. D. in fact says, that he the said C. D., and the said C. D. so indicted and acquitted as last aforesaid, are one and the same person, and not other and different persons; and that the [felony and larceny] of which the said C. D. was so indicted and acquitted as aforesaid, and the [felony and larceny] of which he is now indicted, are one and the same [felony and larceny], and not other and different [felonies and larcenies.] And this he the said C. D. is ready to verify: wherefore he prays judgment, and that by the court he may be dismissed and discharged from the said premises in the present indictment specified.

(2.) Plea of *autrefois acquit* at common law.

Autrefois acquit.

(3.) Plea over to the felony.

[Continue the preceding *autrefois acquit* plea thus]: *And as to the felony and larceny of which the said C. D. now stands indicted, he the said C. D. saith that he is not guilty thereof; and of this the said C. D. puts himself upon the country, &c.*

(4.) Replication to plea under 14 & 15 Vict. c. 100, s. 28.

And hereupon A. B. [the clerk of the peace or the clerk of arraigns], who prosecutes for our said Lady the Queen in this behalf, says, that by reason of anything in the said plea of the said C. D. above pleaded in bar as alleged, our said Lady the Queen ought not to be precluded from prosecuting the said indictment against the said C. D.; because he says that the said C. D. was not lawfully acquitted of the said charges in the said indictment in manner and form as by the said C. D. in the said plea is alleged; and this he the said A. B. prays may be inquired of by the country. And the said C. D. doth the like. Therefore let a jury come, &c.

(5.) Replication of *nul tiel record*.

And hereupon A. B. [the clerk of the peace or clerk of arraigns], who prosecutes for our said Lady the Queen in this behalf, says, that by reason of anything in the said plea of the said C. D. above pleaded in bar alleged, our said Lady the Queen ought not to be precluded from prosecuting the said indictment against the said C. D.; because he says that there is not any record of the said supposed acquittal; in manner and form as the said C. D. hath above in his said plea alleged; and this he the said A. B. prays may be inquired of by the country, &c. And the said C. D. doth the like. Therefore let a jury come, &c.

(6.) Certificate of dismissal in case of acquittal in case of assaults punishable summarily.

For the form of this certificate, see tit. "Assault," ante, p. 322.

(7.) Plea of dismissal of complaint for assault before justices by the party aggrieved.

For the form of this plea, see tit. "Assault," ante, p. 323.

(8.) Replication no proper certificate.

And hereupon A. B. [the clerk of the peace or clerk of arraigns] who prosecutes for our said Lady the Queen in this behalf says, that by reason of anything in the said plea by the said C. D. above pleaded in bar alleged, our said Lady the Queen ought not to be precluded from prosecuting the said indictment against the said C. D.; because he says that the said C. D. did not obtain the said certificate in the said plea mentioned; in manner and form as the said C. D. has in his said plea alleged. And this he, the said A. B., prays may be inquired of by the country, &c.

Autrefois attainé.

Plea of attainder.

THE 7 & 8 Geo. IV. c. 28, s. 4, enacts, "That no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment." By this enactment the plea of *autrefois attainé* appears unavailable. (See 4 Bla. Com. 337, n.)

As to attainder, see ante, "Attainder."

Autrefois convict.

[14 & 15 Vict. c. 100.]

Autrefois convict.

A MAN convicted of a felony may plead such conviction in bar of any subsequent indictment for the felony of which he was convicted. (2 Hale, P. C. 251; *Vaux's case*, 4 Co. 45; 2 Hawk. c. 36, s. 10, 14.)

Autrefois
convict.

This plea, like that of *autrefois acquit*, formerly set out the record of conviction to the allowance of judgment, inclusive, and contained an averment either that the offences charged in the former indictment and in the present one were one and the same offence, and not other and different, or that the felony charged in the present indictment was (if at all) committed previously to the former conviction. (See *ante*, p. 352; and further, 1 *Chit. C. L.* 461, 462.) But by 14 & 15 Vict. c. 100, s. 28, "In any plea of *autrefois convict* it shall be sufficient for any defendant to state that he has been lawfully convicted of the said offence charged in the indictment." Where a person stole two pigs belonging to the same person at the same time, and after being convicted and punished for stealing one of the pigs, was again indicted at a subsequent assize for stealing the other; the former had not been found out till after the prisoner had been convicted:—Held, that this might legally be done. (*R. v. Brettell, Car. & M.* 609; 2 *Hale, P. C.* 246.)

14 & 15 Vict. c.
100, s. 28.

Where a prisoner was tried and acquitted of uttering one forged note, and afterwards indicted for uttering another note, which he had uttered at the same time as a former one, *Wood, B.* held that it could be done. (*R. v. Brettell, ubi sup.*, per *Cresswell, J.*)

The court will not reject a plea of *autrefois convict* on account of the informal manner in which it is handed in by the prisoner, but will assign counsel to put it into a formal shape and postpone the trial to give time for its preparation. (*R. v. Chamberlain, 6 C. & P.* 93.)

A plea of *autrefois convict* formerly could only be proved by the record itself, or an examined copy, and the indictment with the finding of the jury, &c., indorsed by the proper officer, was not sufficient, although it appeared that no record had been made up: but the court before whom the prisoner was brought to be tried the second time, would postpone the trial, at the request of the prisoner, on affidavit of the fact, to give time for an application for a *mandamus* to compel the making up of the record; (*R. v. Bowman, 6 C. & P.* 101;) unless the second indictment were preferred at the same assizes as the first. (*R. v. Parry, 7 C. & P.* 836.) But by the 14 & 15 Vict. c. 99, s. 13, instead of a record of the conviction or a copy thereof, it shall be sufficient that it be certified, or purport to be certified, under the hand of the clerk of the court, or other officer having the custody of the records of the court, where such conviction took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment, omitting the formal parts thereof.

Proof of previous
conviction.14 & 15 Vict. c.
99, s. 13.

The form of judgment for the defendant is, that he be dismissed or discharged from the premises. Judgment.

Judgment for the crown, on the issue being found against the defendant in cases of felony is, that he answer over; (*R. v. Taylor, 3 B. & C.* 514, *ante*, p. 353;) but in cases of misdemeanour it is final for the crown. (*Id.*) See further on this, tit. "*Demurrer*," *post*.

A plea in the nature of a plea of *autrefois convict* is one which sets up as a bar to an indictment for an assault, previous conviction before magistrates for the same assault under the 24 & 25 Vict. c. 100, s. 342, *et seq.*, which now replaces the repealed Act of 9 Geo. IV., c. 27, and s. 27, *et seq.* To an indictment for stabbing, cutting, and wounding, with the several intents to maim, to disable, and to do some grievous bodily harm, a plea of a previous conviction before magistrates of an assault being the same transaction is good. (*Reg. v. Walker, 2 Moo. & R.* 446.) Upon an indictment for felonious assaulting and wounding with intent to kill and murder, laying also other indictments, *Erle, J.*, was of opinion that if a conviction for the same assault before justices had been pleaded it would have been a bar, and although it had not been pleaded, he considered that in adjudicating on the case he ought to treat the prisoner as having undergone the punishment allotted for it. (*Reg. v. Stanton, 5 Cox, C. C.* 324.) The case of *Reg. v. Walker*

Previous assault.

*Autrefois
convict.*

was recognized in *Reg. v. Elrington*, (1 B. & S. 688 ; 31 L. J. M. C. 14.) In that case a certificate of dismissal by justices of a complaint of common assault under 9 Geo. IV. c. 71, s. 27, was held to be, under sect. 28, a bar to an indictment for unlawful wounding, and for an assault occasioning actual bodily harm, arising out of the same circumstances, *ante*, p. 316.

So if a man has been convicted before the magistrates for an aggravated assault, under the 9 Geo. IV. c. 31, & 16 & 17 Vict. c. 30, upon a complaint of an assault, it would be pleadable in bar to an indictment for a rape for the same cause. (*Re Thompson*, 6 H. & N. 193 ; 30 L. J. M. C. 19, *ante*, p. 320.) But it has been held that a previous conviction before justices under the 24 & 25 Vict. c. 100, s. 42, for an assault is not a bar to a subsequent indictment for the manslaughter of the person assaulted, after death has supervened, as the effect and consequence of the same assault, on the ground that upon the death happening a new offence arose. (*Reg. v. Morris*, 1 L. R. C. C. 90 ; 36 L. J. M. C. 84 ; *ante*, p. 318.)

Under the 24 & 25 Vict. c. 100, s. 45, there must either have been given a certificate of dismissal, or there must have been a conviction, and the fine paid, or imprisonment undergone, and therefore it is no bar to subsequent proceedings, for the same cause that the magistrate had merely ordered the defendant to enter into recognizances to keep the peace, and to pay the costs thereof, which had been done, no conviction being drawn up. (*Hartley v. Hindmarsh*, 1 L. R. C. P. 553 ; 35 L. J. M. C. 255.)

Every conviction under the "Summary Jurisdiction Act," (18 & 19 Vict. c. 126,) by justices in petty sessions, has the same effect as a conviction upon indictment for the same offence would have had, save that no such conviction is attended with forfeiture.

That such a plea must be specially pleaded appears from *Hardy v. King*, 6 C. & P. 427.

A party found guilty by a jury at a sessions irregularly holden, is entitled to have the record of the proceedings correctly made up according to the fact, and the Court of Queen's Bench will grant a *mandamus* to the justices to make up such record. (*R. v. Justices of Middlesex, in re Bowman*, 5 B. & Ad. 1113 ; 3 Nev. & M. 110.)

Not pleadable,
when.

Record must
be made up.

(1.) Form of plea
of autrefois
convict under
14 & 15 Vict.
c. 100, s. 28.

And the said C. D. in his own proper person comes into court here, and having heard the said indictment read says, that our said Lady the Queen ought not further to prosecute the said indictment against the said C. D., because he says that heretofore, to wit, on the _____ day of _____, A.D. _____, at the general quarter sessions of the peace, holden at _____, in and for the county of _____, he the said C. D. was lawfully convicted of the said offence charged in the said indictment, which said conviction still remains of full effect and unrevoked. And this he the said C. D. is ready to verify. Wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the present indictment specified.

(2.) Plea of
previous conviction
of assault
before justices
under 24 & 25
Vict. c. 100,
s. 42.

For the form of this plea, see *ante*, tit. "Assault," p. 322.

(3.) Replication to
plea of previous
conviction before
justices.

And hereupon A. B. [the clerk of the peace or clerk of arraigns] who prosecutes for our said Lady the Queen in this behalf says, that by reason of anything in the said plea of the said C. D. above pleaded in bar alleged, our said Lady the Queen ought not to be precluded from prosecuting the said indictment against the said C. D. : because he says that there is not any record of the said supposed conviction in manner and form as the said C. D. hath above in his said plea alleged ; and this he the said A. B. prays may be inquired of by the country, &c. ; and the said C. D. does the like. Therefore let a jury come, &c.

Award.

AS to arbitration of disputes between masters, labourers, and workmen, see the 5 Geo. IV. c. 96, *post*, "*Servants*," Vol. V.

Mr. *Watson*, in his *Treatise on Awards*, p. 35, observes, that "matters of a criminal nature, for obvious reasons, are not capable of being submitted to the decision of an arbitrator. But there are many cases which may be made the subject of an indictment, as assaults, nuisances, and the like, and for which the prosecutor may proceed by action, where those reasons do not apply. It is perfectly clear that these matters may be referred before indictment, but whether an indictment found for any of these minor offences can be referred or not without express leave of the court, does not appear to be quite so clearly settled. Perhaps the clearest rule to be drawn from the cases on the subject is, that indictments for assaults, nuisances, &c., may be referred to arbitration by leave or by authority of the court where they are depending, but without such permission or authority indictments cannot be referred; and this rule will reconcile all the reported cases on the subject."

What criminal matters may be referred.

Thus in the case of *R. v. Rant*, reported in *Kyd on Awards*, p. 64; (and see *Elworthy v. Bird*, 2 *Bing.* 258; 9 *Moore*, 430; and *Elworthy and another v. Bird*, *M'Clelland's Exch. Rep.* 69;) and *Rex v. Coombs*, which was a reference to arbitration of two cross indictments for riot, which indictments had been found at the Middlesex sessions; the reference by bond and the submission having been made a rule of court, a motion to set aside the award having been made, Mr. *Kyd* showed cause, on the ground that the award was a nullity, as a criminal prosecution could not be made the subject of reference. He had hardly stated the fact that the submission was by bond, when the court expressed considerable surprise that a criminal prosecution should be so submitted; they observed that it was usual indeed in prosecutions of this kind, before a verdict was given, or after verdict of conviction, and before sentence, for the parties to talk together by the recommendation of the court, and, if they agreed, the court set a nominal fine; but the whole was done under the inspection of the court, and their sentence formally allowed.

Several instances will be found of references of indictments by the authority of the courts where the indictments were pending, both before and after conviction. (See *R. v. Moate*, 3 *B. & Ad.* 237; *Blanchard v. Lilly*, 9 *East*, 497; *Kyd*, 66, 67; *R. v. Cotesbatch*, 2 *D. & R.* 265.)

In a modern case it was decided on demurrer that an indictment for an assault might, by leave of the Court of Quarter Sessions, be referred to arbitration; and the Court of Common Pleas decided, principally on the authority of *Beeley v. Wingfield*, 11 *East*, 46, that an action might be maintained to enforce such a reference. *Gibbs*, C. J., is reported to have laid down the law generally, that the parties might refer, without noticing the necessity for the concurrence of the court; however, his observations must be taken with reference to the precise point then under consideration. (*Baker v. Townsend*, 1 *Moore*, 120; 7 *Taunt.* 422.)

And where a defendant, prosecuted by parish officers for disobeying an order of maintenance, was convicted, and sentence deferred by the court with a view to an arrangement; in the meantime he was committed to prison, and the officers demanded of him a sum considerably exceeding the amount of maintenance due, but part of which was to cover costs; A. paid part and gave a note for the remainder; he was then brought before the court, fined 1s. and discharged. It did not appear whether or not the particulars of the arrangement were communicated to the court, but A. made no complaint when brought up.

Award.

Reference of
appeal to quarter
sessions to arbit-
ration.

In an action afterwards brought upon the note, held, that no irregularity appeared in the compromise, and that the note was legal. (*Kirk v. Strickwood*, 1 Nev. & M. 275 ; 4 B. & Ad. 421.)

It had been decided that the justices at sessions, by the consent of the parties, have power to refer the merits of an appeal against a poor rate to arbitration, and to adopt the award of the arbitrators as their judgment ; but without the leave of the parties they cannot order such a reference, for they have no power to delegate their authority. (*R. v. Justices of Northampton, Cald.* 9, 2 ; *Bott*, 716.)

Reference of
appeals given
to quarter
sessions with-
out going to
sessions.

By 12 & 13 Vict. c. 45, s. 12, reciting that by 9 & 10 Will. III., c. 15, provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes, for which there was no other remedy but by personal action, or by suit in equity, and that it was *expedient* in like manner to facilitate and render more effectual references to arbitration of controversies and disputes, for which the remedy is by appeal to a court of general or quarter sessions of the peace, it is enacted, "that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate or other matter, (except a summary conviction or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) for which the remedy is by such appeal, it shall be lawful for the parties by themselves, or their attorneys, and by order of a judge of Her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons, and thereupon such and the like proceedings in all respects shall and may be taken with regard to submission under this Act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said Act of King William the Third, with regard to the cases therein provided for ; and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions."

By order of
sessions.

By sect. 13, it is enacted, "that it shall be lawful for any court of general or quarter sessions of the peace, before which any appeal (except against a summary conviction or an order in bastardy, or any proceedings under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) shall be brought to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such manner and on such terms as the said court shall think reasonable and proper ; and such order may be made a rule of the Court of Queen's Bench on the application of either party, and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next, or next but one, after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual, to all intents, as if given by the said court : provided always that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may,

in the later event, order the court of general or quarter sessions to enter continuances and hear the appeal."

Award.

When the respondents had taken up the award, which was in favour of the appellant, and refused to agree to produce it at the sessions for the purpose of being entered as the judgment of the sessions, the Court of Queen's Bench made a rule absolute calling upon them to do so, and *Campbell, C. J.*, seemed to think that the sessions could not act unless the original award was produced. (*Lord, app., Standish (Overseers)*, resp., *Trin. Term, 1856, MS.*, incorrectly reported as having been done by consent, 27 *Law Times*, 185.)

If an award be referred back to the same arbitrator merely for the purpose of ascertaining the costs, he is not bound to hear fresh evidence. (*Re Huntley*, 1 *E. & B.* 787; 22 *L. J. Q. B.* 277.)

By 12 & 13 Vict. c. 45, s. 14, "if, upon any reference to arbitration under this Act, it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators, or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of general or quarter sessions of the peace to enter continuances and hear the appeal."

General provisions.

By s. 15, the several provisions relating to arbitration contained in 3 & 4 Will. IV. c. 42, are "to be deemed and taken to be applicable arbitrations under this Act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the court of general or quarter sessions of the peace would have had on trial of the appeal."

By sect. 16, "no recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited . . . by any submission to arbitration under the provisions of this Act."

The statute 9 & 10 Will. III. c. 15, allowing parties to make a submission a rule of court, in order to proceed for non-performance of an award, &c., does not extend to matters criminal, and therefore a submission for an indictment at the quarter sessions for an assault could not be made a rule of court under the statute. (*Watson v. McCullum*, 8 *T. R.* 520; *R. v. Cotesbatch*, 2 *D. & R.* 265.)

Making submission a rule of court.

Nor does the 3 & 4 Will. IV. c. 42, s. 39, which takes away the power of revoking of a submission to arbitration, extend to a reference agreed to on the trial of an indictment, and either party has power to revoke the reference. (*Reg. v. Bardell*, 1 *Nev. & P.* 74; 5 *A. & E.* 619.)

Revoking authority.

The determination of compensation by two justices under the Land Clauses Act, 1845, s. 121, is rather in the nature of an award than an order within Jervis's Act, (11 & 12 Vict. c. 43,) and therefore need not be in writing. (*Reg. v. Boyce Coombe*, 32 *L. J. M. C.* 67.)

Award by justices under Lands Clauses Act.

Bail. (a)

I. *What it is, &c.*, 362.

II. *In what Cases, and Power and Duty of Justices out of Sessions as to*, 363.

III. *Power of Justices in Sessions and others to take Bail*, 368.

IV. *Number and Sufficiency, &c. of Bail*, 373.

(a) As to bail in general in criminal cases, see 1 *Chit. C. L.* 92 to 104; *Deacon's C. D.* title *Bail*: 2 *Hawk.*

c. 15; 2 *Hale*, c. 15; *Bac. Abr. Bail in Criminal Cases.*

Bail.

- V. *Time of Taking, Notice, and Justification of*, 374.
 VI. *Recognizance and Subsequent Proceedings*, 375.
 VII. *Requiring Excessive Bail*, 376.
 VIII. *Denying Bail where it ought to be granted*, 376.
 IX. *Granting it where it ought to be denied*, 377.
 X. *Personating Bail*, 377.
 XI. *Power of Bail*, 378.
 XII. *Liability of Bail, and what a Forfeiture of Recognizance*, 378.
 XIII. *Forms*, 379.

AS to bail on a *habeas corpus* or *certiorari*, see "*Certiorari*," *post*; "*Habeas Corpus*," Vol. II.; and on remand during an adjournment of proceedings in cases of summary convictions, see tit. "*Conviction*," *post*.

I. What it is, &c.

What.

Bail, (from the French *bailler*, to deliver,) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him that he shall appear at a day limited, to answer and be justified by the law. (1 *Hale's Sum.* 96.) It is a delivery or bailment of a person to his sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to prison.

Difference between bail and mainprize.]

The difference between bail and mainprize is, that mainpernors are only surety, but bail is a custody; and therefore the bail may re-take the prisoner if they doubt he will fly, and detain him and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. (1 *Hale's Sum.* 96.)

Justice to discharge, or commit, or bail, when.

By 11 & 12 Vict. c. 42, where any person charged with an indictable offence shall appear or be brought before any justice or justices of the peace, "when all the evidence offered on the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such justice or justices such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant, commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may now be committed; or in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned."

II. In what Cases, and Power and Duty of Justices out of Sessions as to.

2. *In what Cases, and Power of Justices as to.*

With respect to the cases in which bail is allowable, it is observable that at common law no justice, or indeed any court, could bail a person in execution on a judgment or conviction for any offence, for then such imprisonment, without bail, is part of the sentence and punishment, and this is the existing law. (8 T. R. 325; *Paley on Conv.* 5th ed. 338; 1 Wils. 299.) Nor will a court, between conviction and judgment, bail the offender without the consent of the prosecutor. (4 Burr. 2545, 2539.) But when a party was arrested before conviction, by the ancient common law all felonies were bailable, till murder was excepted by statute; (6 Edw. I. c. 9; *Com. Dig. Bail, F. 1*; *Hale's Sum.* 97;) so that persons might be admitted to bail before conviction in almost every case. (4 Steph. Com. 403.)

At common law.

But the statute of Westminster, (3 Edw. I. c. 15,) took away the power of justices of the peace to bail in treason, and in several instances of aggravated felony. The statutes 23 Hen. VI. c. 9, 3 Hen. VII. c. 3, and the 1 & 2 Ph. & Mary, c. 13, contained further regulations upon this subject; and the latter statute extended the power of bailing to justices of the peace.

By statute.

In felonies and certain misdemeanours.—The 11 & 12 Vict. c. 42, s. 23, enacts, “that where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanour in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanour for the prosecution of which the costs may be allowed out of the county-rate, such justice of the peace may in his discretion admit such person to bail upon his procuring and producing such surety or sureties as in the opinion of such justice will be sufficient to ensure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and thereupon such justice shall take the recognizance of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards and before the first day of the sitting or sessions at which he is to be tried, or before the day to which such sitting or sessions may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanours, certify on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, and it shall be lawful for any justice of the peace attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such person to bail in manner aforesaid; or if it shall be inconvenient for such surety

In felonies and certain misdemeanours.

At time of commitment.

In the like cases after commitment.

Mode of taking bail after commitment.

2. *In what Cases, and Power of Justices as to.*

Any other misdemeanour.

Recognizances of bail after commitment.

As to bail for treason.

Form of recognizance when defendant entitled to a traverse.

Principle upon which parties should be admitted to bail.

or sureties in such a case to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison and produced, together with the certificate on the warrant of commitment as aforesaid, to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and order him to be discharged out of custody as to that commitment as hereinafter mentioned. And where any person shall be charged before any justice of the peace with any indictable misdemeanour other than those hereinbefore mentioned, such justice, after taking the examination in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison; or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, before the first day of the sitting or sessions at which he is to be tried, or before the day to which such sitting or sessions may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid. And in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted with the examinations to the proper officer. Provided, nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail except by order of one of her Majesty's secretaries of state, or by her Majesty's Court of Queen's Bench at Westminster, or a judge thereof in vacation. Provided also, that when in cases of misdemeanour the defendant shall be entitled to a traverse at the next assizes or quarter sessions, and shall not be bound to take his trial until the second assizes or sessions, in every such case the recognizance of bail shall be conditioned that he shall appear and plead at the next assizes or sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second assizes or sessions, unless such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first assizes or sessions, in which case the recognizance may be in the ordinary form hereinbefore mentioned."

Before this statute, it was the law (as old as the Statute of Westminster, (3 Edw. I., c. 15,) that every man charged with a misdemeanour had a right to be released from prison and admitted to bail on producing sureties. (See *Reg. v. Badger*, 4 Q. B. 470.)

By 11 & 12 Vict. c. 42, s. 23, the party about to be admitted to bail must procure such surety or sureties as in the opinion of the committing justice will be sufficient to ensure the appearance of such person at the time and place when and where he is to be tried.

Three elements are to be taken into consideration by the justices in determining whether the prisoner should be admitted to bail or not, viz., the gravity of the crime, the weight of the evidence, and the severity of the punishment, with regard to the probability of his appearing to take his trial. (*Re Robinson*, 23 L. J. Q. B. 286; *Reg. v. Barronet*, 1 E. & B. 1; 22 L. J. M. C. 25; *Reg. v. Scaife*, 9 Dowl. 553.)

Accomplices should never be allowed to go on bail, because they are so likely to abscond, notwithstanding that it is intended that they should give evidence for the prosecution. (*R. v. Beardmore*, 7 C. & P. 497.)

As regards the consequence of a justice's refusing bail when besought to grant it, see *post*, p. 376.

Where warrant backed.—Where a warrant has been backed and the party accused has been taken out of the county where the supposed offence has been committed, any justice of the county where he was taken may, if the offence be bailable, take bail. (See 11 & 12 Vict. c. 42, ss. 11, 12, 13, 14, 15.)

As to backing of warrants, see *post*, "*Warrant*," Vol. V.

Where offence committed out of jurisdiction of committing justice.—Where a person is charged with an offence alleged to have been committed out of the jurisdiction of the justice hearing the charge, it is by the 11 & 12 Vict. c. 42, s. 22, enacted, "that whenever a person shall appear or shall be brought before a justice or justices of the peace in the county, riding, division, liberty, city, borough, or place wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any county or place within England or Wales wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices, and he and they are hereby required to examine such witnesses, and receive such evidence in proof of such charge, as shall be produced before him or them, within his or their jurisdiction; and if, in his or their opinion, such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where the offence is alleged to have been committed, or shall admit him to bail, as hereinafter mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizance accordingly, as is hereinbefore mentioned; but if such testimony and evidence shall not, in the opinion of such justice or justices, be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, as hereinbefore is mentioned, and such justice or justices shall, by warrant under his or their hand and seal or hands and seals, order such accused party to be taken before some justice or justices of the peace in and for the county, riding, division, liberty, city, borough, or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which said deposition and recognizances shall be deemed to be taken in the case, and shall be treated, to all intents and purposes, as if they had been taken by or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid, by virtue of the said last-mentioned warrant, the constable, or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person pro-

2. *In what Cases, and Power of Justices as to.*

Where warrant backed.

Where examination taken in a different jurisdiction from that of offence committed.

If a person be apprehended in one county on charge of an offence committed in another, he may be examined in the former;

and if evidence be deemed sufficient, may be committed to prison;

if insufficient, to be brought before some justice in the latter county.

As to payment of expenses of conveying the accused into the proper county, &c.

2. *In what Cases, and Power of Justices as to.*

ducing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced, shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party, and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an order upon the treasurer of the county, riding, division, or liberty, city, borough, or place, or if such city, borough, or place shall be contributory to the county rate of any county, riding, division, or liberty, then upon the treasurer of such county, riding, division, or liberty respectively to which it is contributory, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present the same to him for payment: Provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void."

Metropolitan police magistrates and stipendiary magistrates in other places may act alone.

Within the Metropolitan Police District.—By 11 & 12 Vict. c. 42, s. 29, "Any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms in the schedule to this Act contained may be varied so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled, 'An Act for Improving the Police in and near the Metropolis,' or in an Act passed in the third year of the reign of her present Majesty, intituled, 'An Act for further Improving the Police in and near the Metropolis,' or in an Act passed in the same year of the reign of her present Majesty, intituled, 'An Act for Regulating the Police Courts in the Metropolis,' or in an Act passed in the fourth year of the reign of her present Majesty, intituled, 'An Act for better defining the Powers of Justices within the Metropolitan Police District.'"

Nothing to affect powers, &c., contained in 10 Geo. IV. c. 44, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

Within the metropolitan police district.

By 2 & 3 Vict. c. 71, s. 36, (the Metropolitan Police Act,) it is enacted, "That any one of the said metropolitan police magistrates, if he shall think fit, may remand any person for further examination, or may suffer to go at large any person who shall be charged before him with any felony or misdemeanour, upon his personal recognizance, (with or without sureties,) and every such recognizance shall be conditioned for the appearance of such person before the same or some other of the said magistrates for further examination, or to surrender himself to take his trial at the Central Criminal Court, or at a court of general or quarter sessions, at a day and place to be therein mentioned, and the magistrate shall be at liberty, from time to time, to enlarge every such recognizance

to such further time as he shall appoint, and every such recognizance which shall not be enlarged, shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof: Provided always, that whenever any magistrate shall take the recognizance of any person to appear at the Central Criminal Court, or at a court of general or quarter sessions, the magistrate shall be bound to return the depositions taken in the case, and to bind over the witnesses to appear and give evidence in like manner as if he had committed the party to take his trial at such court."

Sect. 14. "Any one of the said magistrates may do alone any act at his court which by any law now in force or by any law not containing an express enactment to the contrary shall be directed to be done by more than one justice, but none of the said magistrates shall be competent to act as a justice either alone or with any other justice in any thing which is to be done at a special or petty sessions of all the justices acting in the division, or by the justices in quarter sessions assembled."

By 11 & 12 Vict. c. 42, s. 30. "And be it enacted, that it shall be lawful for the Lord Mayor of the City of London, or for any alderman of the said city for the time being, sitting at the Mansion House or Guildhall justice rooms in the said city, to do alone any act at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of her present Majesty, intituled, 'An Act for regulating the Police in the City of London.'"

Sect. 31. "And be it enacted, that the chief magistrate of the metropolitan police court at Bow Street for the time being shall be a justice of the peace of and for the county of Berks, if his name be inserted in the commission of the peace for that county, without possessing the qualification by estate required by law in that behalf, and without taking any oath of qualification."

Sect. 43, which defines the duties of justices with reference to summary convictions and orders when a warrant has been issued to apprehend a defendant and bring him before a justice or justices to answer an information or complaint laid or made within that Act, if at the hearing a variance between the warrant and the evidence appears such as to have misled the defendant, the justice may adjourn the hearing to a future day, and either commit the defendant in the mean time or discharge him upon his entering into a recognizance with or without sureties to appear at the adjourned hearing.

Sect. 9. And further, if at the hearing a variance appear between the information, &c., and the evidence such as to have misled the defendant, the justice may adjourn the hearing to some future day and commit the defendant or discharge him upon his entering into a recognizance with or without sureties to appear at the adjourned hearing.

Sect. 13. If at the appointed time and place of hearing the defendant appear, but the informant, &c., do not, the justice shall dismiss the information, &c., unless for some reason he think proper to adjourn the hearing to some other day, and either commit the defendant in the mean time or discharge him upon his entering into a recognizance with or without sureties to appear at the adjourned hearing.

Sect. 16. Before or during such hearing of any information or complaint under that Act, the justice, &c., present may adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attorneys or agents then present, and in the mean time the said justice or justices may suffer the defendant to go at large, or may commit him, or may discharge him upon his entering into a recognizance, with or without sureties, to appear at the adjourned hearing.

2. In what Cases, and Power of Justices as to.

One magistrate may act except in anything directed to be done at petty, special, or quarter sessions.

The lord mayor or any alderman of London, may act alone.

Nothing to affect powers, &c., contained in 2 & 3 Vict. c. 94.

Chief magistrate of Bow Street may be a justice for Berks, without qualification.

On a variance between warrant and evidence.

On a variance between information and evidence.

Upon non-appearance of informant.

Upon adjournment before or during hearing.

2. *In what Cases, and Power of Justices as to.*

On issue of distress warrant.

Sect. 20. Upon the issuing of a distress warrant under that Act, the defendant may be ordered to be kept in safe custody until its return, unless he shall give sufficient security, by recognizance or otherwise, for his appearance at the place and time appointed for the return of the warrant of distress.

Sect. 37. The metropolitan police magistrates and the stipendiary magistrates may act alone, and the powers conferred upon them by the 2 & 3 Vict. c. 47, &c., are preserved to them.

The provisions respecting the backing of warrants contained in the 11 & 12 Vict. c. 42, are incorporated in the 11 & 12 Vict. c. 43 (ss. 3—37).

In other cases, actions, &c.

In other Cases.—No power at all is given to justices of the peace to bail any persons on process in civil actions, or for contempts to superior courts. (2 *Hawk.* c. 15, s. 64.)

There are furthermore many statutes which prohibit bail and mainprize in very many cases, and allow the same in many others, which are interspersed among the several titles which treat of these matters.

And where a statute ordaineth that an offender shall be imprisoned at the Queen's will or pleasure, there the prisoner cannot be bailed till he hath redeemed his liberty by such fine or ransom as shall be assessed by the Queen's justices in her courts. (*Dalt.* c. 167, pp. 294, 295.)

III. Power of Justices in Sessions and others to take Bail.

Justices in sessions.

Justices in Sessions.—It seems to be a good general rule that so far as any persons are judges of any crime, so far they have power of bailing a person indicted before them of such crime; and upon this ground it seems clear that any two justices, one being of the *quorum*, many of *common right* bail persons indicted at the sessions, for that any two such justices may hear and determine the indictment. Also it hath been holden that any one justice hath the like power. (2 *Hawk.* c. 15, s. 54, 62.)

Justices of gaol delivery.

Justices of Gaol Delivery.—The justices of gaol delivery may bail any person convicted before them of homicide, by misadventure or in self-defence, or even of manslaughter, the better to enable him to obtain his pardon; and this even after their sessions is determined. (2 *Hawk.* c. 15, s. 65.) But if the judge be of opinion that the prisoner in either of the cases is improperly convicted, or that the offence is of a very venial nature, the practice is now not to bail him, but merely to impose a light or a nominal fine on the prisoner, and to order him to be discharged. The justices of gaol delivery, it seems, have the same power of bailing persons indicted before them for any crime as that possessed by the Court of Queen's Bench. (2 *Hawk.* c. 15, s. 65.) If by reason of the absence of a material witness or other good cause, no indictment is taken before the grand jury, and it is necessary to postpone the trial of the prisoner, the practice is to discharge him on entering into his own recognizance, unless, indeed, the absence of the witness or other cause of postponement can be traced to the acts or contrivances of the prisoner, or his friends, when the further recognizances of two other persons in heavy sums for his appearance would be required. (*R. v. Beardmore*, 7 C. & P. 497.)

On postponement of trial.

After true bill found.

But a judge will not admit a party to bail after the grand jury have returned a true bill against him for murder. (*Reg. v. Chapman*, 8 C. & P. 558; *R. v. Andrews*, 2 D. & L. 10; 13 L. J. M. C. 113.) Nor can a person arrested during the assizes under an indictment for a misdemeanour, be discharged on bail without pleading and traversing. (*Reg. v. Wettenhall*, 2 M. & Rob. 291.)

And where a true bill was found against several prisoners for a rape, and the prisoners had been on bail and surrendered, but the prosecutrix did not appear either before the grand jury or to give evidence on the trial : on application being made to the judge to postpone the trial, founded on affidavit, stating that, in the belief of the deponent, the prosecutrix was kept out of the way in consequence of money having been given to her by some of the prisoners, the judge postponed the trial, and would not admit the prisoners to bail. (*Reg. v. Guttridge*, 9 Car. & P. 228.) And in *Reg. v. Callaghan*, (7 Ir. C. L. R. 19,) after the prisoners had been committed for sheep stealing, and bail refused by the justices, the court refused to bail. (See also *Reg. v. MacCartie*, 11 Ir. C. L. 199.)

3. Power of Sessions and others to take Bail.

After bail refused by justices.

By the Habeas Corpus Act, (31 Car. II. c. 2, s. 7,) "If any person committed for treason or felony, shall on the first day of the sessions of gaol delivery, after such commitment, petition the court, and upon the last day move in open court to be set at liberty upon bail, the justices are required to bail such persons, unless it appear upon oath that the witnesses for the King could not be produced at the same sessions. And if the prisoner shall not upon his application be indicted and tried the second sessions, he shall be discharged from his imprisonment." (See "*Habeas Corpus*," Vol. II.)

Habeas Corpus Act.

Sheriffs.—By the common law the sheriff had power only to bail those persons who were indicted before him at his torn. By 1 Edw. IV. c. 2, he is required to return all indictments taken before him at his torn to the justices of the next sessions. At this day, therefore, he has no power of this kind, or at least it is never exercised in practice upon criminal charges. (2 Hen. Bla. 418 ; 4 T. R. 505 ; 2 Saund. 59 b ; Hawk. b. 2, c. 15, ss. 26, 27 ; Bac. Ab. Bail. A. ; Lamb. 15.) It has indeed been supposed (2 Saund. 59 b) that he may take a recognizance, though not a bond ; but it appears from the authorities that he cannot in any way take on himself to set a prisoner at liberty on bail whom he once obtains in his custody. (4 Term Rep. 505 ; 2 Hen. Bla. 418 ; Lamb. 15 ; Dick. J., Bail, I.)

By sheriffs.

Coroners.—By 22 Vict. c. 33, s. 1, "In every case in which a coroner's jury shall have found a verdict of manslaughter against any person or persons, it shall be lawful for the coroner or deputy coroner before whom the inquest was taken to accept bail if he shall think fit, with good and sufficient sureties for the appearance of the person so charged with the offence of manslaughter at the next assizes and general gaol delivery, to be holden in and for the county within which the inquest was taken, and, thereupon, such person, if in custody of any bailiff or other officer of the coroner's court, or in any gaol under a warrant of commitment issued by such coroner, shall be discharged therefrom."

By coroner.

For form of recognizance of bail, see *post*, p. 382.

Constables.—By the common law every constable, being a conservator of the peace, might have bailed one suspected of felony ; but this authority is transferred from him to the justices of the peace by several statutes. (Lamb. 15.)

By constables.

By the "Metropolis Police Act," (10 Geo. IV. c. 44, s. 9,) a night constable may in certain cases take bail.

The "Municipal Corporations Act," (5 & 6 Will. IV. c. 76, s. 79,) also empowers night constables to take bail in cases of petty misdemeanour.

Court of Queen's Bench.—The Court of Queen's Bench, or any judge thereof in vacation, (not being restrained or affected by the statute 3 Edw. I. c. 15, or 7 Geo. IV. c. 64, s. 1,) in the plenitude of that power which they enjoy at common law, and the Courts of Common Pleas or Exchequer, or a judge thereof, by 1 & 2 Vict. c. 45, may, in their discre-

Court of Queen's Bench, Common Pleas, or Exchequer, or a judge thereof.

3. Power of Sessions and others to take Bail.

tion, admit persons to bail in *all cases* whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception in their discretionary authority is, where the commitment is for a contempt, or in execution. (*R. v. Marks*, 3 *East*, 163; 2 *Hale*, 129; 2 *Hawk. c.* 15, s. 47; *Leach*, 168; *Rudd's case*, 1 *Cowp.* 333.) Thus they may bail for high treason; (1 *Leach*, 168; *Comb.* 111.) treason-felony; (*Reg. v. M^cCartie*, 11 *Ir. C. L.* 188;) murder; (3 *East*, 163;) manslaughter; (2 *Stra.* 1242; *Comb.* 111;) forgery; (*Cowp.* 333;) rapes; (4 *Burr.* 2179;) horse stealing; (2 *Chit. Rep.* 110;) sheep stealing; (*Reg. v. Callagher*, 7 *Ir. C. L. R.* 19;) libels; (1 *Wils.* 29;) and for all felonies and offences whatever. (3 *East*, 163; 5 *T. R.* 169; *Reg. v. Barronnet*, 1 *E. & B.* 8; 1 *Dears. C. C.* 51; 22 *L. J. M. C.* 25; *R. v. Barthelemy*, 1 *E. & B.* 8; 1 *Dears. C. C.* 60; 22 *L. J. M. C.* 25.) And such courts will exercise such control as to bail where the local justices have refused to bail. (*Reg. v. Callagher*, 7 *Ir. C. L. R.* 19.)

Power to bail discretionary.

Even where the commitment is in execution, the court, where a *certiorari* has issued to bring up a conviction under which a party is in prison, will admit him to bail until the case is determined by the court. (*Reg. v. Lord*, 4 *Dowl. & L. P. C.* 405; 16 *L. J. M. C.* 15.)

This power, however, is to be exercised in the discretion of the court, and none can claim its benefits *de jure*. (2 *Hale*, 129.) The judges seldom admit a person to bail where magistrates have properly refused it, without some particular circumstances are shown to exist in his favour. (*Bac. Ab. Bail, D.*; *Reg. v. Callagher, ubi sup.*)

And it is not usual for this court to bail in cases of felony, unless, when in consequence of the defect of the commitment, and of the examination and depositions, it appears doubtful whether any offence has been committed. (1 *Leach*, 481; *R. v. Judd*, 2 *T. R.* 257; *R. v. Remnant*, 5 *T. R.* 169.) And however defectively the *mittimus* may have been framed, yet, if from the depositions the court can collect that a felony has been committed, they will not bail the prisoner, but remand him upon a special rule. (3 *East*, 163.)

On ground of ill health.

The ill health of the party in custody is not of itself sufficient ground to induce this court to bail him, but where he has been for some time in prison, so that his life is actually in danger thereby, the court might perhaps bail him. (*R. v. Bishop*, 1 *Stra.* 29; 1 *Chit. C. L.* 99.) They will not admit him to bail where the complaint is constitutional. (*R. v. Wyndham*, 1 *Stra.* 4.) Nor where the illness arises from the act of the prisoner. (*Id.*; *Harvey of Coombe's case*, 10 *Mod.* 334.)

In all cases where it appears that a prisoner ought to be bailed, if he be unable to defray the expenses of being brought up to Westminster for that purpose, a rule to show cause will be granted why he should not be bailed by a magistrate in the county, with a *certiorari* to return the depositions before them; (*R. v. Jones*, 1 *B. & A.* 209; see *R. v. Booker*, 2 *Dowl. P. C.* 446; *R. v. Massey*, 6 *M. & S.* 108;) and this without an affidavit of his poverty. (*R. v. Gregory*, 9 *Dowl. P. C.* 129.)

In the case of an assault the application to have the defendant bailed should be made to a judge at chambers, and not by motion to the court. (2 *Chit. Rep.* 110.)

Motion how made.

The motion for the bailment may be made upon an original indictment before them, or upon an indictment removed by *certiorari*, or upon a prisoner being removed by *habeas corpus* before or after. The application is grounded on affidavits, made in order to satisfy the court that if bailed the prisoners will be forthcoming at their trial, and should state any conduct on the part of the prosecution and circumstances with reference to the case which would show that the detaining of the prisoner in custody is a hardship upon him, or which would recommend his case to the favourable consideration of the court.

A motion for a writ of *habeas corpus* and for a *certiorari* to bring

the depositions taken before the magistrates or coroner is founded on copies of the depositions verified by affidavit; (*Reg. v. Barthelemy*, 1 *Dears. C. C.* 62; 22 *L. J. M. C.* 25;) and the court will look at the depositions to see how strong the evidence is against the prisoners. (*Reg. v. Cleary*, 16 *Ir. C. L. R. App.* II.)

As to the mode of taking the bail in these cases, see the form of the rule in *R. v. Massey*, 6 *M. & S.* 108.

We shall hereafter consider the necessity for bailing under the Act of *Habeas Corpus*. (See "*Habeas Corpus*," Vol. II.)

By 5 Edw. III. c. 8, the Marshal of the Queen's Bench is prohibited from bailing persons indicted of felony, on pain of half-a-year's imprisonment and ransom. (*F. N. B.* 215.)

3. *Power of Sessions and others to take Bail.*

Marshal of Queen's Bench.

On Removal of Indictment by Certiorari.—By 19 Vict. c. 16, s. 9, "Whenever any writ of *certiorari* shall be delivered to any court for the purpose of removing any indictment or inquisition from such court, it shall be lawful for such court either to require any person who shall be attending such court under any recognizance to take his trial upon such indictment or inquisition to enter into such recognizances, with so many sureties and in such sum or sums of money, and with such condition for his appearance and taking his trial upon such indictment or inquisition whenever and wherever the same shall be tried, as to such court shall seem fit, or to commit such person to the common gaol or house of correction for the county or place for which such court shall be holden, there to remain until he shall be removed under the provisions of this Act or otherwise delivered by due course of law."

On removal of indictment by certiorari.

Sect. 22. "Whenever any person charged with any offence by any indictment or inquisition, transmitted or removed to the said Central Criminal Court, under the provisions of this Act, shall appear before such court, in pursuance of any recognizance for that purpose or otherwise, it shall be lawful for such court, from time to time, and as often as to the same court shall seem fit, either to require such person to enter into such recognizance, with so many sureties, and in such sum or sums of money, and with such condition for his appearance at such Central Criminal Court and otherwise, as to such Central Criminal Court shall seem fit, or to commit such person to the custody of the keeper of the said gaol of Newgate until he shall be discharged by due course of law."

When indictment removed to Central Criminal Court.

Sect. 24. "Whenever any prosecutor or person charged with any offence shall apply, either before or after any indictment or inquisition shall have been found or taken, to the said Court of Queen's Bench, or to any judge thereof, for an order that such indictment or inquisition shall be tried at the said Central Criminal Court under the provisions of this Act, it shall be lawful for the said Court of Queen's Bench in term time, or for the said judge in vacation, to require such prosecutor or other person to submit to such conditions as to bail, the payment of the costs of the prosecutor and witnesses, and of the removal and transmission or removal of such indictment or inquisition, and of the removal of such defendant, and any other matter or thing whatsoever, as in the judgment of such Court of Queen's Bench or judge may reasonably be imposed upon such prosecutor or defendant."

Court of Crown Cases Reserved.—As to bail on case reserved for the Court of Crown Cases Reserved, see tit. "*Appeal*," ante, p. 268.

On a case stated by justices.—On a case stated by justices for the superior court under 20 & 21 Vict. c. 43, see tit. "*Appeal*," ante, p. 262.

Bail in Error.—By the 8 & 9 Vict. c. 68, it is enacted, that in every case of judgment, whether given before or after the passing of this Act, for a *misdeemeanour*, where the defendant or defendants shall have

Bail in error in misdeemeanour.

3. *Power of Sessions and others to take Bail.*

Execution not to be stayed till bail entered into.

Certificate of bail being entered into to be warrant of discharge, &c.

obtained a writ of error to reverse such judgment, execution thereupon shall be stayed until such writ of error shall be finally determined, and in case the defendant or defendants shall be imprisoned under such execution, or any fine shall have been levied, either in whole or in part, in pursuance of such judgment, the said defendant or defendants shall be entitled to be discharged from imprisonment, and to receive back any money levied on account of such fine from the person or persons in whose possession the same shall be until such final determination as aforesaid: provided always that no execution upon any such judgment shall be stayed, unless and until the defendant or defendants shall become bound by recognizance to be acknowledged before one of the judges of her Majesty's Court of Queen's Bench, or one of the commissioners appointed to take special bail in actions depending in the superior courts, with two sufficient sureties to be approved of by such judge or commissioner, in such sum as such judge or commissioner shall direct to prosecute the writ of error with effect, and in case the judgment shall be affirmed forthwith to render the said defendant or defendants to prison according to the said judgment where imprisonment shall have been adjudged, and every such recognizance shall, after justification of bail, be filed for record in the said Court of Queen's Bench, in like manner and upon payment of the like fees as in the case of other recognizances filed in the crown office in that court. And the judge of the said Court of Queen's Bench and the said commissioner shall have the like powers in respect of the justifying such bail in error and the examination of the sureties, and the like rules shall apply as in respect of special bail in actions depending in such court: provided always, that in case of any defendant under legal disability it shall be sufficient if two persons, to be approved of by such judge or commissioner, shall become bound by recognizance on the behalf of such defendant to be acknowledged and conditioned as aforesaid. Sect. 2. then provides for the making and delivering to the defendant or his attorney of a certificate that the recognizances have been duly filed, and by 9 & 10 Vict. c 24, s. 4, such certificate under the hand of the clerk of the crown or the master or assistant-master on the crown side of such court and sealed with the seal of the crown office, is to be a sufficient warrant for the discharge of such defendant or defendants and for the re-payment of such fine.

By the 16 & 17 Vict. c. 32, s. 1, "In every case in which a writ of error shall be brought to reverse any judgment for misdemeanour, except when the same shall be brought by her Majesty's Attorney-General, no execution thereupon shall be stayed, nor shall any defendant be discharged from imprisonment as to such execution, unless and until he shall become bound by recognizance to be acknowledged in manner in the said Act mentioned, to prosecute the writ of error with effect, and personally to appear at the said court wherein such writ may be returnable on the day whereon judgment shall be given upon the said writ of error and also if so ordered by the court or by a judge thereof, four days' notice being given either to the defendant or his attorney, or to the bail personally, or by leaving the same at his or their last known place of abode on the days and times appointed for any proceeding upon the said writ, and so from day to day, and not to depart that court without leave, and forthwith to render the said defendant to prison according to the said judgment in case the said judgment shall be affirmed."

Sect. 2. "In every case in which a defendant shall make default in prosecuting such writ of error with effect or in personally appearing in the court of error upon any proceeding to be had upon such writ of error as aforesaid, it shall be lawful for the said court to order the said recognizance to be estreated into the Court of Exchequer in a summary way and without the issuing of a writ of *scire facias* in that behalf, and also to order the said writ of error to be quashed without any

argument being had thereupon, and in every such case the defendant shall forthwith be liable to execution upon the judgment."

SECT. 8. After reciting that whereas, in cases of default made by parties in performing the conditions of recognizances into which they may have entered to proceed to the trial of issues joined upon any indictment or information filed in her Majesty's Court of Queen's Bench, it hath been the usage and practice to enforce the forfeiture of such recognizances by writ of *scire facias*, and the course of procedure by *scire facias* in such cases is dilatory, inconvenient, and expensive. "Be it therefore enacted, that in every such case of default it shall be lawful for the said court, or a judge thereof, to call upon the parties who have entered into such recognizance, by rule or order, to show cause why such recognizance should not be estreated into the Exchequer, and thereupon, unless cause be shown to the satisfaction of the said court or judge in excuse of such default, such court or judge may order such recognizance to be estreated into the Exchequer." (See further, tit. "*Fines, &c.*," Vol. II., "*Recognizance*," Vol. V.)

4. Number, &c., of Bail.

A rule to show cause substituted for writ of *sci. fa.* in the case of forfeited recognizances.

IV. Number and Sufficiency, &c., of Bail.

The sureties ought to be at least two men of ability, but whose sufficiency as well as the sum to be expressed in their recognizance, are, it is said, left in a great degree to the discretion of the magistrate or magistrates, and therefore they may examine them upon oath as to the value of their property. (2 *Hale*, 125; *Hawk.* b. 2, c. 15, s. 4; *Bac. Ab. Bail, F.*; *Com. Dig. Bail, K.* 1; *Dalt. J. C.* 114; *Dick. J. Bail, II.* and *id. V.*; *Bennett v. Watson*, 3 *M. & S.* 1.) By 11 & 12 *Vict. c.* 42, s. 23, *ante*, p. 363, the person accused must produce or procure such surety or sureties as in the opinion of the committing justice will be sufficient to ensure the appearance of such person at the time and place appointed for his trial. Every one of the bail ought to be of ability to answer the sum in which he is bound, which, in times when money was more valuable than at present, was said ought *never to be less than forty pounds* for the principal in a felony, and the sureties each in twenty pounds, but might be as much higher as the justices in their discretion thought fit to require upon consideration of the ability and quality of the prisoner, and the nature of the offence. (2 *Hale*, 125; and see language of the 31 *Car. II. c.* 2, s. 3, and 2 *Wils.* 159, as to the description of the bail.)

Number and sufficiency.

It is said not to be usual for the Queen's Bench to bail on a *habeas corpus* on a commitment for treason or felony without *four* sureties, but for every inferior offence *two* are sufficient in both cases in that court. The number of the bail must be mentioned in the *notice*, otherwise the court will reject the application. (*Hawk.* b. 2, c. 15, s. 4, n. 1; *Bac. Ab. Bail, F.*; 2 *T. R.* 255; 1 *Leach*, 486; 1 *Stra.* 5; 2 *Stra.* 855; *Com. Dig. Bail, K.*; 1 *Gill. L. & E.* 4; *Dick. J., Bail, V.*; *R. v. Shaw*, 6 *D. & R.* 154.) And if a rule of court require two bail, and one of the bail appear and be insufficient, the defendant will be remanded. (*Dough.* 466, in notes.)

And though the commitment of the magistrate be informal, the Court of Queen's Bench will not discharge the defendant, in case it appears that a great offence is charged upon him, without ample security for his appearance. (*R. v. Marks*, 3 *East*, 163.) And in a case of this nature the prisoner was compelled to enter into a recognizance himself in one thousand pounds, and four sureties in five hundred pounds each. (2 *T. R.* 257; 1 *Leach*, 486.) And after conviction for a libel, the defendant, who was bailed on the ground of illness, was obliged to find bail himself in two thousand pounds, and two sureties in one thousand pounds each. (1 *Stra.* 9; 9 *Id.* 5.)

4. *Nature, &c. of Bail.*

Qualification of bail.

By the "Declaration of Rights," 1 Will. & M. sess. 2, c. 2, excessive bail ought not to be required. (See *post*, 376.)

Every housekeeper possessed of sufficient property to answer the required responsibility may be bail, and a money qualification is especially to be regarded. (See *Reg. v. Saunders*, 2 Cox C. C. 249.) The defendant's attorney may be bail for him. (*R. v. Bowes*, Dougl. 466, n.) A person convicted of an infamous crime, as perjury, &c., cannot be admitted as adequate bail. (*R. v. Edwards*, 4 T. R. 440. See as to this, however, *Reg. v. Broome*, 18 L. T. 19, per *Martin*, B.) Nor can a married woman, for her recognizance cannot be estreated. (*Styles*, 369; 2 *Hawk*. c. 15.) Shares in a railway company in actual operation are property in respect of which bail may justify. (*Pierpoint v. Brenner*, 15 M. & W. 201; 15 L. J. Exc. 81.)

Depositing money, &c.

It is said that justices, as a substitute for bail, may take money in deposit. (*Moyser v. Gray*, Cro. Car. 446.)

The bail should not be rejected on account of their political opinions. (*Reg. v. Badger*, 4 Q. B. 468; *post*, 376.) Nor on the ground that they have been indemnified if otherwise of adequate means. (*Reg. v. Broome*, per *Martin*, B., 18 L. T. 19.)

Increasing number of.

After the defendant has been admitted to bail, the court will not, on affidavit of aggravating facts, require the bail to be increased. (*R. v. Salter*, 2 Chit. Rep. 109.) As to requiring fresh bail, see *infra*, p. 375.

V. Time of taking, Notice and Justification of Bail.

Bail may be taken at any time before conviction though after imprisonment.

It appears that if a party is not ready with bail at the time he is apprehended, and the offence is bailable, he may at any time before conviction be released from imprisonment on finding sureties. (*R. v. Shebbeare*, 1 Burr. 460; *Hawk*. b. 2, c. 16, s. 1, n. 1.) And by 11 & 12 Vict. c. 42, s. 23, in the case of indictable offences, the person committed for trial may be bailed at any time before the first day of the sitting or session at which he is to be tried, see *ante*, p. 363.

By 11 & 12 Vict. c. 42, s. 23, *ante*, p. 363, a mode of taking bail after the prisoner has been committed for trial is provided.

Notice of.

In general no notice of bail is requisite, but justices may, if they think fit, (and in strong cases it is usually done,) order that a reasonable notice of bail, usually twenty-four or forty-eight hours, according to circumstances, shall be given to the prosecutor.

The 30 Geo. II. c. 24, s. 17, which required twenty-four hours' notice of bail in offences, as to false pretences, &c., appears to be repealed by 7 & 8 Geo. IV. c. 27.

A notice of bail should be very accurate in the description of the proposed bail, or the time of inquiry will have elapsed before the bail are found. (3 B. & P. 555.)

Where bills for misdemeanours are found under the commission of oyer and terminer at the Central Criminal Court, the defendant must give forty-eight hours' notice of bail, unless the application for process is made on a Friday, in any case in which there is reason to think that there is a desire to keep the party in custody over Sunday. (*R. v. Carlile*, 6 C. & P. 628.)

Where an indictment is found at the sessions, and the prosecutor moves for a warrant, the court, when they grant it, will make a note, by way of order, at the foot of the warrant, that the defendant shall give twenty-four hours' notice of bail to the prosecutor; which time the court will, in some cases, order to be extended to forty-eight hours, according to the circumstances stated, and a judge or justice of the peace after sessions will, upon producing a certificate of a bill having been found, grant a warrant on a similar order, the intent of which

notice is, that the prosecutor may have an opportunity of inquiring into the sufficiency of the bail, that if they are not satisfactory, he may have an opportunity of opposing them. (*Cro. C. C.* 15.)

Where the defendant, in order to avoid being apprehended under a warrant upon indictment found or preferred, voluntarily goes before a magistrate and offers bail to answer the supposed offence, it is said that no notice of bail is requisite. (*Cro. C. C.* 16.)

Where neither the husband of a *feme covert*, nor her next of kin, can be discovered, service of a rule *nisi* for bailing a defendant on a charge of manslaughter may be made on the coroner. (*R. v. Williams*, 8 *Dowl. P. C.* 301.)

Justification being requisite, bail is absolute in the first instance. (*R. v. Hall*, 2 *Bla. Rep.* 1110.) The bail may, however, be examined on oath by the magistrates, or by the prosecutor, or any professional gentleman by the magistrates' leave, as to the sufficiency of their property.

It is said that if the magistrates be deceived, they may require fresh sureties. (2 *Hawk. c.* 15; 2 *Hale*, 125; *Dick. J. Bail.*)

6. Recognizance and subsequent Proceedings.

Justification of.

Fresh bail.

VI. Recognizance and subsequent Proceedings.

As to the procedure by justices before admitting to bail, see 11 & 12 *Vict. c.* 42, *ante*, p. 363.

By the 4 & 5 *Will. IV. c.* 86, s. 11, justices acting within the limits of the Central Criminal Court are to certify examinations, &c., to the justices of *oyer and terminer* and gaol delivery, as they are required by the 7 *Geo. IV.*

Formerly the justices used personally to attend with the recognizance in order to certify it, but it is now handed over to the clerk of the peace or clerk of the assizes.

The form of recognizance of bail is given in the schedule to 11 & 12 *Vict. c.* 42, see *post*, p. 381.

But if the party accused be an infant, (2 *Hale*, 126,) or a married woman, then the recognizance is taken only from the sureties. (*Id.*) As to the mode of taking the recognizances of bail where the accused is in prison, see 11 & 12 *Vict. c.* 41, s. 23, *ante*, p. 363.

The recognizance need not be signed by any of the parties bound in the condition. (*Dick. Sess.* 87; 2 *Hawk. c.* 15, s. 83.)

If the recognizance be to answer generally, it includes every species of crime of which the culprit may be accused, and, therefore, where it is intended that the recognizance should only have relation to a particular crime, that crime should be distinctly specified. (*Reg. v. Ridpath*, 10 *Mod.* 152.)

As to the jurisdiction of the justices in respect of offences committed out of the limits of their own county, see 11 & 12 *Vict. c.* 42, s. 22, *ante*, p. 365.

Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the constable, the justices discharge him as of course: but "in all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered or lodged with such keeper he shall forthwith obey the same." (11 & 12 *Vict. c.* 42, s. 24.) For form of warrant of deliverance, see *post*, 382.

Form and effect of recognizance.

Before whom taken.

Deliverance on.

Upon bailing person in prison under committal for trial the justice to give a warrant of deliverance to gaoler.

7. Requiring excessive bail.

Excessive bail.

Justices must take care that in cases where they are bound by law to bail the prisoner, they do not, under the pretence of demanding sufficient surety, make so excessive a requisition as in effect to amount to a *denial of bail*, which is a grievance expressly prohibited by the 1 Will. & M. sess. 2, c. 2, (the Declaration of Rights,) by which it is declared that excessive bail ought not to be required, and if it be, this is a misdemeanour, punishable not only by the statute, but also by the common law, as an offence against the liberty of the subject, and an action lies at the suit of the party wrongfully imprisoned, and an indictment may be supported. (6 *Mod.* 179; *Hawk.* b. 2, c. 15, ss. 13 to 24; *Bac. Ab. Bail, F.*; *Com. Dig. Bail, F. 5, K. 6*; 3 *B. & P.* 551.)

VII. Requiring excessive Bail.

VIII. Denying Bail where it ought to be granted.

Refusing bail.

To refuse bail where the party ought to be bailed (the party offering the same) is a misdemeanour punishable not only by the suit of the party, but also by indictment or criminal information. (2 *Hawk.* c. 15, s. 13; *Hale's Sum.* 97. See 3 *Edw. I. c. 15*; 2 *Inst.* 191; 31 *Car. II. c. 2.*)

If several persons conspire to persuade the justice to refuse the bail when sufficient, they may be indicted. (6 *Mod.* 179.)

The prisoner must tender the bail, or the justice is not required to grant it. (2 *Hale*, 123; 2 *Hawk.* c. 15, s. 14.)

Criminal information.

A very important case with reference to the refusal of bail by justices, which, on account of its practical bearing, it will be prudent to state at some length was *Reg. v. Badger*, (4 *Q. B.* 468; 12 *L. J. M. C.* 66,) and arose out of the following circumstances. It appeared, that during some disturbances in Staffordshire, in 1842, a person named O'Neil was apprehended for using seditious language at a meeting of chartists held near Dudley. He was committed for trial on that charge; he subsequently tendered as bail two persons perfectly solvent, and who were town-councillors of Birmingham, but the defendants, two justices before whom they attended, refused to accept the bail, on the ground that these persons had attended, and taken a prominent part at Chartist meetings. O'Neil subsequently applied to the Court of Queen's Bench for a rule calling upon the defendants to show cause why a criminal information should not be filed against them for having refused to accept the bail. A rule *nisi* was granted, and in delivering the judgment of the court on a motion to make that rule absolute, Lord Denman, C. J., after going through the facts, and alluding to the state of the disturbed districts about the period of the transaction, made the following, among other, observations: "Standing charged with a misdemeanour," said his lordship, "O'Neil claims the right of every man so charged, to be released from prison and admitted to bail on producing sufficient sureties. He says he tendered such to the magistrates, who refused to receive them, not from an objection to their sufficiency, but from corrupt, partial, and arbitrary motives, with the determination to keep him in prison, when their duty required them, under the circumstances, to bail him and release him out of custody. We have, first, to consider whether this refusal was a lawful act, a point on which no serious doubt was entertained. Neither of the learned counsel who opposed the rule contended that a magistrate can lawfully reject bail at his own discretion, or is at liberty, when bail is offered, to enter into an investigation as to the character or opinions of such bail, provided he is satisfied of their sufficiency to answer for the appearance of the party in the amount reasonably

Solvent bail cannot be rejected on account of their political opinions.

required for that purpose. The law is clear, and is as old as the Statute of Westminster, 13 Edward I. c. 15. Lord Coke, in his commentary upon that statute, (2nd *Institute*, 191,) says, that 'to deny a man *plevin* who is plevisable, and thereby to detain him in prison, is a great offence, and grievously to be punished;' and Lord Hale (c. 17) adopts the same remark, and Hawkins (2, c. 15) speaks of refusal of bail as an indictable offence. Blackstone, referring to the ancient statute, (4th book, c. 22,) the *Habeas Corpus* and the Bill of Rights, calls it an offence against the liberty of the subject. If, then, such refusal took place from improper motives, it might be treated as a criminal offence and made subject to an indictment or information;" but it appearing that the defendant had acted upon a resolution come to by his brother magistrates on the subject the rule was discharged, but the defendant was condemned in costs.

10. *Personating bail.*

IX. Granting Bail where it ought to be denied.

Admitting bail where it ought not to be admitted is punishable by the judges of assize by fine; or punishable as a negligent escape at common law. (*Hale's Sum.* 97.) Taking bail improperly.

If the keeper of a prison bail any not bailable, he shall lose his fee and office; if another officer, he shall have three years' imprisonment, and make fine at the king's pleasure. (3 Edw. I. c. 15.)

A justice of Surrey committed a man on suspicion of stealing a mare, and bound over the owner to prosecute. Afterwards, upon examining two other persons he admitted the party to bail. The prosecutor appeared at the assizes, and found a bill; but the party accused did not appear. And the court granted an information against the justice, declaring they should not have bailed the man themselves. (*R. v. Clarke*, 2 *Str.* 1216.)

"If any justice of the peace shall take bail where he ought not, or wittingly or willingly take insufficient bail, and the party appear not, the said justice not only to be proceeded against according to law, but likewise to be complained of to the Lord Chancellor, that he may be turned out of his commission." (6th Order of the Judges to be observed by Justices of the Peace, O. B. 16 Car. 2. From *Kelyng's Reports*, p. 3.)

X. Personating Bail.

By the 24 & 25 Vict. c. 98, s. 34, "Whosoever, without lawful authority or excuse, (the proof whereof shall lie on the party accused,) shall, in the name of any other person, acknowledge any recognizance, or bail, or any *cognovit actionem*, or judgment, or any deed or other instrument before any court, judge, or other person lawfully authorized in that behalf shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement in the common gaol or house of correction;" (s. 52;) "such confinement not to exceed one month at any one time, nor three months in any one year." (S. 53.) Personating bail.

If the convict be already under sentence of transportation or imprisonment, this sentence may commence after the expiration of the former sentence. (7 & 8 Geo. IV. c. 28, s. 10.)

This offence is not triable at quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

11. *Power of bail.*

Power of bail.

XI. *Power of Bail.*

The party bailed is considered, in law, as in custody of his sureties, who are considered as his keepers, and they may therefore reseize to bring him in, if they fear his escape, and take him before the justice or court, and by whom he may be committed, and thus the bail may be discharged from their recognizance; but he is at liberty to find new sureties. (2 *Hale*, 124, 7; 2 *Hawk.* c. 15, s. 3; *Com. Dig. Bail*, Q. 2.)

The bail may thus seize the person of the principal at any time, (as on a Sunday,) or at any place, and in surrendering the principal they may command the co-operation of the sheriff and any of his officers. (*Anon.* 6 *Mod.* 231; *Roll. Rep.* 99. And see *Ex parte Lyne*, 3 *Stark.* 132; *Horn v. Swinford*, 1 *Dowl. N. P. C.* 20.)

The law will imply a contract by the defendant to indemnify his bail for his non-payment of the costs of a prosecution for misdemeanour, for which a verdict was found against him where the condition of the recognizance was, that the defendant should appear and plead, and at his own proper costs and charges cause the issues to be tried, and which recognizance had been estreated from the defendant's default; but it would seem that the law would raise no implied contract to indemnify the bail against the consequences of defendant's non-appearance to take his trial. (*Jones v. Orchard*, 16 *C. B.* 614; 24 *L. J. C. P.* 229.)

XII. *Liability of Bail, and what a Forfeiture of Recognizance.*

What a forfeiture of recognizance, and its consequences.

Liability of.

By appearance the terms of the recognizance are fulfilled. (2 *Hawk.* c. 15, s. 84.) If, however, the sureties are bound by recognizance, that a defendant shall appear in the Queen's Bench the first day of such term, to answer to a particular information against him and not to depart till he shall be discharged by the court; and afterwards the Attorney-General enters a *nolle prosequi* as to that information, and exhibits another, on which the defendant is convicted, and refuses to appear in court after personal notice; the recognizance is forfeited by the default, for being express that the party shall not depart till he be discharged by the court, it cannot be satisfied unless he be forthcoming, and ready to answer to any other information exhibited against him before he receives his discharge, as much as to that which he was particularly bound to answer. (*Reg. v. Ridpath*, 10 *Mod.* 152; *ante*, 375.)

But in such case it seems that the recognizance will not be forfeited by the party's not appearing in court on the first day of every term after he has pleaded to the information as it may be before he has pleaded. (2 *Hawk.* c. 15, s. 84.)

Where offence committed in the county of any city or town corporate.

The 38 *Geo. III.* c. 52, s. 5, enacts, "That every recognizance for the appearance to answer an indictment for any offence charged to have been committed within the county of any city or town corporate, shall be forfeited, if the prosecutor shall, ten days previous to the holding of the next court of *oyer and terminer* and gaol delivery in the next adjoining or other county, give notice to the person bound in such recognizance of the intention to prefer such indictment in the next adjoining or other county, if the party bound in such recognizance shall not appear; but if he shall appear, then the recognizance shall be discharged, the same as if the party bound thereby had complied with the terms thereof;" and the 6th section of the same Act provides, "That leaving such notice at the last place of abode of the party bound by the recognizance ten days before the holding of the sessions shall suffice,

and that the recognizance shall not be estreated or returned into the exchequer until the next following session, in order that such recognizance may be discharged, in case the party bound shall show sufficient cause for discharging the same."

It seems that the defendant and his bail cannot be called upon their recognizance, except on the day on which he is bound to appear; if he is called on any other day, notice must be given of the intention. (*R. v. Adams, Rep. temp. Hurdw. 237.*)

The bail of a person acquitted of perjury may move to be discharged from their recognizance before acquittal is entered on the record, because it appears on the *postea*. (*R. v. Spencer, 1 Wils. 315.*)

A person is deemed to be convicted within the meaning of the terms of a recognizance if he be found guilty by verdict upon good and sufficient indictment, though he die before judgment is given against him, but he is not convicted if, after verdict of guilty, the judgment is arrested on the ground of the insufficiency of the indictment. (*R. v. Finmore, 8 T. R. 409; R. v. Turner, 15 East, 570.*)

The bail are not entitled to have their recognizance discharged without submitting to the terms of paying the costs incurred. (*R. v. Lyon, 3 Burr. 1461; R. v. Finmore, 8 T. R. 409; R. v. Turner, 15 East, 570; Jones v. Orchard, per Cresswell, J., 24 L. J. C. P. 230.*)

If the principal do not appear, and the recognizance be forfeited and the penalty paid by the bail, yet the principal continues amenable to the law whenever he can be taken.

The persons of the bail are not liable under the recognizance. (*R. v. Dalton, 2 Stra. 911; 2 Hale, 125.*)

As to the liability of bail on their recognizance on the removal of an indictment by *certiorari*, *ante*, p. 371, and see tit. "*Certiorari*," *post*.

See as to mode of estreating recognizances, 16 & 17 Vict. c. 32, *ante*, p. 373, and *post*, "*Fines, &c.*," Vol. II., "*Recognizances*," Vol. V.

13. Forms.

XIII. Forms.

Surrey.

The Queen
against

J. N. indicted for assaulting J. B.

Take notice, that the above-named J. N. will personally be and appear before the Right Honourable Thomas Lord Denman, or such other judge as shall be sitting at chambers in Rolls Gardens, Chancery Lane, on, &c., at the hour of eleven o'clock in the forenoon, and will then and there enter into a recognizance, with sufficient sureties, for his personal appearance at the next sessions of the peace to be holden for the county of Surrey, to answer an indictment preferred against him for assaulting the above-named J. B.; and the names of such sureties are T. N., No. 190, High Holborn, in the county of Middlesex, plumber, and J. N., of No. 189, High Holborn, in the said county, oilman. Dated, &c.

Yours, &c. W. F. attorney for the said J. N.

To J. B. the prosecutor above named.

(1.) Notice of bail to an indictment for an assault in Surrey, where indictment was found and certified, and defendant taken under a judge's warrant.

Middlesex, (to wit.)

The Queen
against
F. P. } for a nuisance.

Take notice, that W. B., of No. 9, Booth's Court, Well street, St. Mary-le-bone, in the county of Middlesex, shoemaker, and R. W., of No. 12, Ogle Street, St. Mary-le-bone, in the said county, shoemaker, will, on next, the day of instant, at seven o'clock in the evening, before such of her Majesty's justices of the peace as shall be sitting at the police office, in Marlborough Street, become bail for the personal appearance of the above-named defendant at the next sessions of the peace to be holden in and for the said county, to answer and plead to the indictment preferred and found the last sessions, for

(2.) The like where indictment was for keeping a disorderly house.

13. *Forms.* unlawfully keeping a common bawdy house. Dated this day of
one thousand eight hundred and

Yours, &c. J. N. solicitor for defendant.
To G. and L. N. solicitors for the prosecution.

(3.) Notice of putting in bail at judge's chambers, on indictment for assault.

The Queen }
against J. M. } on the prosecution of W. P.

Mr. W. P. Take notice, that I shall put in bail before Mr. Justice B., at his chambers in Roll's Gardens, Chancery Lane, to-morrow, at six o'clock in the evening, for my appearance at the next general sessions of the peace, to be holden at the new sessions-house on Clerkenwell Green, in and for the county of Middlesex, then and there to answer and plead to the indictment you have preferred against me for assaulting you. The names of the bail are M. S., of No. 5 Tavistock Street, near Covent Garden, mercer, and P. G., of No. 6 in the same place, victualler.

Dated this day of , A. D. 186 .

Yours, &c. J. M.

(4.) Notice of putting in bail on a bench warrant, before a justice.

The Queen }
against C. D. } on the prosecution of A. B.

Mr. A. B. Take notice, that on the day of , one thousand eight hundred and , at eleven o'clock in the forenoon, I shall put in bail before S. P., esquire, one of her Majesty's justices of the peace, in and for the county of Middlesex, at his house, situate in New Brentford in the said county, for my appearance at the next general quarter sessions of the peace, to be held at the sessions-house, Clerkenwell Green, in and for the said county, then and there to answer and plead to the indictment preferred against me for assaulting you, and the names of my bail are, G. H., of, &c., smith, and J. K., of, &c., tailor. Dated this day of , A. D. one thousand eight hundred and .

Yours, &c., C. D.

(5.) Notice of putting in bail before a judge of Q. B. to an indictment in Q. B.

In the Queen's Bench.
Middlesex, (to wit.)

The Queen }
against C. D. } indicted by the name of O. P.

Take notice, that the defendant will put in bail on Saturday next, at eleven o'clock in the forenoon of the same day, before the Right Honourable Sir lord chief justice of her Majesty's Court of Queen's Bench, at Westminster, or such other judge of the said court as may be then at his chambers in Roll's Gardens, Chancery Lane, London, for the appearance of the said defendant in the said court to an indictment for certain misdemeanours, and to answer to the same, according to the course of the said court; and the names and addresses of the bail are J. H., of No. 10, Henrietta Street, Covent Garden, in the county of Middlesex, esquire, and J. O., of No. 10, Gray's Inn, in the said county of Middlesex, gentleman. Dated the day of , one thousand eight hundred and .

Yours, &c. O. P. solicitor for the defendant.

To Messrs. G. and R. solicitors for the prosecution.

(6.) Recognizance of bail instead of remand on an adjournment of examination. (11 & 12 Vict. c. 42, sched. Q. 2.)

Be it remembered that on the day of in the year of our Lord , A. B. of , labourer, L. M. of , grocer, and N. O. of , butcher, personally came before me, one of her Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say,—the said A. B. the sum of , and the said L. M. and N. O., the sum of each, of good and lawful money of Great Britain, to be made and levied of their

several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned at before me

J. S.

Condition.

The condition of the within written recognizance is such, that whereas the within bound A. B. was this day [or "on last past"] charged before me for that [i.e. as in the warrant]: and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant, if, therefore, the said A. B. shall appear before me on the day of instant, at o'clock in the forenoon, or before such other justice or justices of the peace for the said [county] as may then be there, to answer [further] to the said charge and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

13. Forms.

Take notice, that you A. B. are bound in the sum of , and your sureties, L. M. & N. O. in the sum of each, that you A. B. appear before me J. S. one of her Majesty's justices of the peace for the [county] of , on the day of instant, at o'clock in the forenoon at or before such other justice or justices of the peace for the same [county] as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this day of 186 .

J. S.

I hereby certify that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default by reason whereof the within written recognizance is forfeited.

J. P.

Be it remembered, that on the day of in the year of our Lord , A. B. of , labourer, L. M. of , grocer, and N. O. of , butcher, personally came before [us] the undersigned, two of her Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our Lady the Queen the several sums following (that is to say), the said A. B. the sum of , and the said L. M. and N. O. the sum of each of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged the day and year first above mentioned at before us

J. S.

J. N.

Condition in ordinary cases.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before [us] the justices within mentioned, for that [i.e. as the warrant], if, therefore, the said A. B. will appear at the next court of oyer and terminer and general gaol delivery [or "court of general quarter sessions of the peace"], to be holden in and for the county of , and there surrender himself into the custody of the keeper of the [common gaol] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void or else stand in full force and virtue.

(7.) Notice of such recognizance to be given to the accused and his sureties. (11 & 12 Vict. c. 42, sched. Q. 3.)

(8.) Certificate of non-appearance to be indorsed on the recognizance.

(9.) Recognizance of bail. (11 & 12 Vict. c. 42, sched. S. 1.)

13. *Forms.**Condition where the defendant is entitled to a traverse.*

The condition of the within written recognizance is such that whereas the said A. B. was this day charged before [me] the justice within mentioned, for that [&c. as in the warrant or summons], if therefore the said A. B. will appear at the next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] to be holden in and for the county of _____, and there plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [or " court of oyer and terminer and general gaol delivery "], surrender himself into the custody of the keeper of the [house of correction] there, and take his trial upon the said indictment and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(10.) Notice of the said recognizance to be given to the accused and his bail. (11 & 12 Vict. c. 42, sched. S. 2.)

Take notice, that you, A. B. of _____ are bound in the sum of _____ and your [sureties L. M. and N. O.] in the sum of _____ each, that you A. B. appear [&c., as in the condition of the recognizance,] and not depart the said court without leave, and unless you, the said A. B., personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties, shall be forthwith levied on you and them.

Dated this _____ day of _____ 184 .

J. S.

(11.) Certificate of consent to bail by the committing justice indorsed on the commitment. (11 & 12 Vict. c. 42, sched. S. 3.)

I hereby certify that I consent to the within named A. B. being bailed by recognizance himself in _____, and [two] sureties, in _____ each.

J. S.

(12.) The like, on separate paper. (11 & 12 Vict. c. 42, sched. S. 3.)

Whereas A. B. was on the _____ committed by me to the [house of correction,] at _____ charged with [&c., naming the offence shortly ;]

I hereby certify, that I consent to the said A. B. being bailed by recognizance, himself in _____ and [two] sureties in _____ each.

Dated the _____ day of _____ 184 .

J. S.

(13.) Warrant of deliverance on bail being given for a prisoner already committed. (11 & 12 Vict. c. 42, s. 24, sched. S. 5.)

To the keeper of the [house of correction] at _____ in the said [county] of _____

Whereas A. B. late of _____ [labourer,] hath before [us two] of her Majesty's justices of the peace, in and for the said county, entered into his own recognizance and found sufficient sureties for his appearance at the next court of oyer and terminer and general gaol delivery [or " court of general quarter sessions of the peace, "] to be holden in and for the [county] of _____, to answer our Sovereign Lady the Queen, for that [&c., as in the commitment,] for which he was taken and committed to your said [house of correction] : These are therefore to command you in her said Majesty's name, that if the said A. B. do remain in your custody, in the said [house of correction,] for the said cause and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals this _____ day of _____ in the year of our Lord _____, at _____ in the [county] aforesaid.

J. S. (L. S.)

J. N. (L. S.)

(14.) Recognizance of bail of accused person to be taken by coroner under 22 Vict. c. 83.

Be it remembered that on the _____ day of _____ in the year of our Lord _____, A. B. of _____ [labourer] L. M. of _____ [grocer,] and N. O. of _____ [butcher,] personally came before me, one of her Majesty's coroners for the [county] of _____ and severally acknowledged themselves to owe to our lady the Queen, the several sums following, that is to say, the said A. B. the sum of _____, and the said L. M. and N. O. the sum of _____ each, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of

our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed. Taken and acknowledged the day and year first above mentioned, at

1. *As to
Hours.*

J. S.

Coroner for the [county] of

Condition indorsed.

The condition of the within written recognizance is such, that whereas a verdict of manslaughter has been found against the said A. B., by a jury empannelled to inquire how and by what means came by his death; if therefore the said A. B. shall appear at the next court of oyer and terminer, and general gaol delivery, to be holden in and for the [county] of , and there surrender himself into the custody of the keeper of the gaol there, and plead to such inquisition, and take his trial upon the same, and not depart the said court without leave, then the said recognizance shall be void, or else the same shall stand in full force and virtue.

Bakehouses.

[26 & 27 Vict. c. 40.]

- I. *Hours*, 383.
- II. *Cleanliness*, 383.
- III. *Local Authority and Inspectors*, 384.
- IV. *Expenses and Rate*, 385.
- V. *Penalties, how Recoverable, and Interpretation Clause*, 385.

FOR the purpose of limiting the hours of labour of young persons employed in bakehouses, and to make regulations with respect to cleanliness and ventilation, and for giving the local authorities power to enforce such regulations.

I. As to Hours.

The 26 & 27 Vict. c. 40, enacts, by sect. 3, "That no person under the age of eighteen years shall be employed in any bakehouse between the hours of nine of the clock at night and five of the clock in the morning. As to hours.

"If any person is employed in contravention of this section, the owner of the bakehouse in which he is employed shall incur the following penalties in respect of each person so employed: that is to say,

"For the first offence, a sum not exceeding two pounds.

"For a second offence a sum not exceeding five pounds.

"For a third and every subsequent offence, a sum not exceeding one pound for each day of the continuance of the employment in contravention of this Act, so that no greater penalty be imposed than ten pounds."

II. Cleanliness and Ventilation.

Sect. 4. That "the inside walls and ceiling, or top of every bakehouse, situate in any city, town, or place, containing, according to the last census, a population of more than five thousand persons, and the As to cleanliness and ventilation of
bakehouse.

2. *Cleanliness
and
Ventilation.*

passages and staircase leading thereto, shall either be painted with oil, or be lime-washed, or partly painted and partly lime-washed. Where painted with oil there shall be three coats of paint, and the painting shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months. Where lime-washed, the lime-washing shall be renewed once at least in every six months.

"Every bakehouse, wherever situate, shall be kept in a cleanly state, and shall be provided with proper means for effectual ventilation, and be free from effluvia arising from any drain, privy, or other nuisance.

"If the occupier of any bakehouse fails to keep the same in conformity with this section, he shall be deemed to be guilty of an offence against this Act, and to be subject in respect of such offence to a penalty not exceeding five pounds."

As to sleeping
places in
bakehouses.

Sect. 5. "No place on the same level with a bakehouse situate in any city, town, or place, containing, according to the last census, a population of more than five thousand persons, and forming part of the same building, shall be used as a sleeping place, unless it is constructed as follows: that is say,

"Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling:

"Unless there is an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made open for ventilation.

"And any person who lets, occupies, or continues to let, or knowingly suffers to be occupied, any place, contrary to this Act, shall be liable for the first offence to a penalty not exceeding twenty shillings, and for every subsequent offence to a penalty not exceeding five pounds."

Power to enforce
regulations in the
Court.

In order to secure the proper painting, or lime-washing, and ventilation of bakehouses in accordance with the regulations in sect. 4, it is provided that "the court, having jurisdiction under this Act, may, in addition to, or instead of, inflicting any penalty in respect of any offence under this section, make an order directing that within a certain time, to be named in such order, certain means are to be adopted by the occupier for the purpose of bringing his bakehouse into conformity with this section, the court may, upon application, enlarge any time appointed for the adoption of the means directed by the order; but any non-compliance with the order of the court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding one pound for every day that such non-compliance continue."

III. Local Authority and Inspectors.

The local authorities.

Sect. 6. "It shall be the duty of the local authorities to enforce within their districts the provisions of this Act; and in order to facilitate the enforcements thereof any officer of health, inspector of nuisances, or other officer appointed by the local authority, hereinbefore referred to as the inspector, may enter into any bakehouse at all times during the hours of baking, and may inspect the same, and examine whether it is or not in conformity with the provisions of this Act; and any person refusing admission to the inspector, or obstructing him in his examination, shall for each offence incur a penalty not exceeding twenty pounds; and it shall be lawful for any inspector who is refused admission to any bakehouse, in pursuance of this section, to apply to any justice for a warrant, authorizing him, accompanied by a police constable, to enter into any such bakehouse for the purpose of examining the same, and to enter the same accordingly." (See "Interpretation Clause," *post*, p. 385.)

IV. Expenses—Rate.

Sect. 7. "The expenses of the local authority may be met by a rate under the enactment that "all expenses by any local authority in pursuance of the provisions of this Act may be paid out of any rate leviable by them, and applicable to the payment of the expenses incurred by the local authority under the said Nuisances Removal Acts, and the said authority may levy such rate accordingly."

V. Penalties.

Penalties are recoverable in England under Jervis's Act, and in Ireland under 14 & 15 Vict. c. 93, and in Scotland as provided by this Act under sect. 8; and a stipendiary magistrate sitting alone at a police court or other appointed place; or the lord mayor or an alderman sitting alone at the Mansion House or Guildhall; and in Ireland a divisional magistrate of police in the police district of Dublin, and elsewhere by one or more justice or justices in petty sessions; and in Scotland a sheriff or sheriff-substitute or a police magistrate of a burgh, may exercise all the powers and jurisdiction given by the Act to two justices. (See s. 9.)

Sect. 2. For the purposes of the Act certain words used therein are construed as follows: Interpretation.

"Local authority," as respects any place, means the persons or bodies of persons defined to be the local authority in that place by 18 & 19 Vict. c. 120, s. 134, or by the Nuisances Removal Acts, hereinafter mentioned—that is to say, as to England, 18 & 19 Vict. c. 121; 23 & 24 Vict. c. 77. As to Scotland, 19 & 20 Vict. c. 103. As to Ireland, 11 & 12 Vict. c. 123, and 12 & 13 Vict. c. 111.

"Bakehouse" shall mean any place in which are baked bread, biscuits or confectionery, from the baking or selling of which a profit is derived.

"Employed" as applied to any person, shall include any person working in a bakehouse, whether he receives wages or not.

"Occupier" shall include any person in possession.

"The court" shall include any justice or justices, sheriff or sheriff-substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

Baker.

A BAKER is liable to a penalty of five pounds under 6 & 7 Will. IV. c. 37, s. 7, (see tit. "*Bread*,"ⁿ) if he refuses to weigh bread purchased of him in his shop as well as from any cart or carriage employed by him to convey or carry out bread for sale. (*R. v. Kingsley*, 16 L. T. 408.) The penalty for refusing to weigh applies wherever there is an obligation to provide weights and scales, and would, therefore, not apply to a baker's man delivering bread from a basket.

By 6 & 7 Will. IV. c. 37, s. 15, no baker can act as a justice of the peace under that Act. (See *post*, tit. "*Bread*,"ⁿ) A similar prohibition is contained in the other Acts relating to bread. (3 Geo. III., c. 11, s. 12; 31 Geo. II. c. 29, s. 33; and 3 Geo. IV., c. 86 s. 17.)

A baker incurs one penalty only under the Lord's Day Act, (29 Car. II. c. 7; see tit. "*Lord's Day*," *post*, Vol. III.) though the

Baker.

exercise of his calling on that forbidden day consisted in separately selling a number of different loaves. (*Crepps v. Durden*, *Cowp.* 740; 1 *Smith, L. C.*)

See further as to bakers, tit. "*Bread.*"

Banks for Savings.

[26 & 27 Vict. c. 87.]

THE laws relating to savings banks have been consolidated, and these institutions are now placed under the regulations contained in the 26 & 27 Vict. c. 87, passed on 28th July, 1863. "The following provisions relate to offences thereunder.

It is a misdemeanour to adopt the name of a certified savings bank as the title of another bank.

Sect. 5. "Every savings bank established or to be established under the provisions of Acts thereby repealed, or that Act, shall be certified under the provisions of that Act, by the title of 'Savings Bank certified under the Act of 1863;' and if any other bank, association, or company, or any other person, shall use or adopt such title as their or his designation, or in carrying on business, the members of every such association or company, or any of them, or any such person respectively, shall be guilty of a misdemeanour, and on conviction thereof shall be punishable accordingly."

Officers of savings bank not duly accounting for moneys received on account of the bank to be guilty of a misdemeanour.

Sect. 9. "If any actuary, cashier, secretary, officer, or other person holding any situation or appointment in any savings bank shall receive any sum or sums of money from or on account of any depositor or person desirous of becoming such, or on account of such savings bank, and shall not forthwith, or in the case of local receivers acting on behalf of any savings bank within the time specified in the rules of the said savings bank, duly account for and pay over the same to the trustees or managers thereof, or to such persons as may be directed by the rules of the said savings bank, such actuary, cashier, secretary, officer, or local receiver, or other person as aforesaid, on being convicted thereof shall be guilty of a misdemeanour."

Property to be laid in trustees.

Sect. 10. "All monies, goods, chattels, and effects whatever, and all securities for money, or other obligatory instruments, and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such savings bank, shall be vested in the trustee or trustees of such savings bank for the time being, for the use and benefit of such savings bank and the respective depositors therein, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any trustee or trustees shall vest in the succeeding trustee or trustees for the same estate and interests as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever, and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person or persons appointed to the office of trustee or trustees of such savings bank for the time being in his, her, or their proper name or names, without further description; and such person or persons shall and they are hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or equity, touching or concerning the property, right, or claim aforesaid, of or belonging to or had by such savings bank; and such person or persons so appointed shall and may in all cases concerning the property, right, or claim aforesaid of such savings bank sue and be sued,

And to be prosecutors.

plead and be impleaded in his or their proper name or names as trustee or trustees of such savings bank, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in by the succeeding trustee or trustees in the proper name or names of the person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs as if the action or suit had been commenced in his or their name or names for the benefit of or to be reimbursed from the funds of such savings bank."

Sect. 11. "No trustee or manager of any savings bank (subject to the provisions hereinafter contained in respect to savings banks in Ireland,) shall be personally liable, except,—

Banks for Savings.

No prosecution to abate on death, &c., of trustee.

"1. For monies actually received by him on account of or for the use of such savings bank, and not paid over and disposed of in the manner directed by the rules of the savings bank.

"2. For neglect or omission in complying with the rules and regulations required by this Act to be adopted as hereinbefore is provided in the maintenance of checks, the audit and examination of accounts, the holding of meetings, and keeping minutes of proceedings thereat.

"3. And also for neglect or omission in taking security from officers, as is hereinbefore provided."

Sect. 13. "Every person who shall have or receive any part of the monies, effects, or funds of or belonging to any savings bank availing itself of the provisions of this Act, or who shall in any manner have been or shall be intrusted with the disposition, management, or custody thereof, or of any securities, books, or papers, or property relating to the same, his executors, administrators, and assigns, shall, upon demand made in pursuance of any order of not less than two trustees and three managers of such savings bank, or at any general meeting of the trustees or managers thereof, give in his or their account or accounts to the said trustees or managers, or to such general meeting of such savings bank, or to such other person or persons as shall be nominated to receive the same, to be examined and allowed or disallowed by the said trustees or managers respectively, and shall on the like demand pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities and effects, books, papers, and property in his or their hands or custody to such person or persons as the said trustees or managers shall appoint, and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities, effects, funds, books, papers, or property in manner aforesaid, it shall be lawful to and for the trustee or trustees of such savings bank for the time being to exhibit a petition to the justices of the peace at their general or quarter sessions of the peace [or at any adjournment thereof] for the county, riding, division, or place wherein such savings bank shall be established, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive, and all assignments, sales, and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever."

Petition to quarter sessions.

As to frauds by Bankers, see tit. "*Larceny*," Vol. III.

Bankrupt.

WE shall notice only that portion of the bankrupt laws as come within the object of this work.

I. *The Derivation and Description of a Bankrupt*, 388.

II. *Offences against the Bankruptcy Act, 1861*, 389.

1. *Of Non-surrender*, 390.
2. *Not making full Discovery of Effects, &c.*, 391.
3. *Removal of Property*, 392.
4. *Allowing Proof of False Debt*, 393.
5. *Omission in Schedule*, 393.
6. *Non-production of Books, &c.*, 393.
7. *Destroying Books, &c.*, 393.
8. *Fraudulent Mortgage, &c.*, 394.
9. *Setting up Fictitious Losses*, 394.
10. *Obtaining Credit by False Pretences*, 394.
11. *Fraudulent Disposal of Goods, &c.*, 394.
12. *As to Indictments generally*, 394.

III. *Perjury or Forgery by Bankrupts*, 398.

IV. *Forms*, 399.

I. Derivation and Description of a Bankrupt.

Derivation.

Lord Coke says, that *banque*, in French, signifies the same as *mensa* in Latin; and that *route* is a sign or mark, as we say a cart rout is the sign or mark where the cart hath gone; and that metaphorically a *bankrupt*, or *banqueroute*, is taken for him that hath wasted his estate, and removed his *banque*, so as there is left but a mention thereof. (4 *Inst.* 277.)

And it is observable that the title of the first English statute concerning this offence, stat. 34 & 35 Hen. VIII. c. 4, "An Act against such Persons as do make Bankrupt," is a literal translation of the French words, *qui font banque route*.

But as the first bankers came to us from Italy, it seemeth more probable that they brought their name along with them; and, consequently, that the word *bankrupt* or *banqueroute* cometh from the Italian *banco rotto*, the bench being broken. The banker himself was so called from the bench or table which he used with his name inscribed, and when he failed, his bench was broken. Which word *rotto* is what remaineth in that country of the Latin *ruptus*, all which, both word and metaphor, we preserve in our language, when we say, that a person is *bankrupt*, or that such a one is broken.

Throughout the first three statutes, the bankrupt is uniformly called an offender, and the original policy of the bankrupt laws seems to have been to prevent and defeat the frauds of criminal debtors. The bankrupt being deemed an offender, and being completely divested of the disposition of his property, those statutes at the first would naturally be considered penal statutes. As trade, however, increased, the risks and calamities incident to commercial speculation were found to augment proportionably, and at length a bankrupt ceased to be considered as a criminal. Accordingly the fourth statute on the subject (21 Jac. I.

c. 19) stated at its very commencement, that "all and singular the afore-said statutes and laws heretofore made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help, and relief of the creditors of such person or persons as already be, or hereafter shall become bankrupt." At this day the bankrupt laws are considered to be a system founded on the principles of humanity as well as justice, and to that end they confer some privileges, not only on the creditors, but also on the bankrupt or debtor himself; on the creditors by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment; on the debtor by exempting him from the rigour of the general law, whereby his person might be confined at the discretion of his creditor, though he in truth should be destitute of any means to discharge the debt; whereas the system of laws in relation to bankrupts, taking into consideration the sudden and unavoidable accidents to which men mixing in mercantile or business pursuits are liable, has secured to them personal freedom and some pecuniary emoluments, upon condition that they surrender up their whole estate for the benefit of those who, in confidence of the bankrupt's solvency, have become his creditors.

Formerly the bankrupt laws only applied to traders, but now all debtors, whether traders or not, are subject to the "Bankruptcy Act, 1861," but no debtor who is not a trader shall be adjudged bankrupt except in respect of some one of the acts of bankruptcy described in the Act as applicable to a non-trader. (24 & 25 Vict. c. 134, s. 69.)

By 24 & 25 Vict. c. 134, s. 157, it is enacted that in granting orders of discharge the following rule shall be observed:—

1. If, on the hearing of any application for an order of discharge, the assignees or any creditor shall allege, and if, with or without such allegation, the court shall be of opinion that there is ground for charging the bankrupt with acts or conduct amounting to a misdemeanour under this Act, the court shall, if the bankrupt consent thereto, direct a clear statement in writing of the charge to be delivered to the bankrupt, and shall appoint a day for trying the bankrupt on such charge, and, if the bankrupt require it, shall summon a jury for such purpose, and may direct the creditors' assignee, or the official assignee, or any of the creditors of the bankrupt to act as prosecutor on such trial: provided always, that in every case of accusation against a bankrupt of acts amounting to a misdemeanour it shall be competent to the court to direct that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice. And for certain offences enumerated in the section, the Commissioner in Bankruptcy may either suspend the order of discharge, &c., or sentence the bankrupt to imprisonment for any period not exceeding one year, but he cannot do both. (See *Ex parte Marks*, 1 L. R. Chan. App. 334; 35 L. J. Bank. 16).

2. Offences against Bankruptcy Act.

Procedure where the Court of Bankruptcy thinks the bankrupt has committed a misdemeanour.

May direct a prosecution in criminal courts.

II. Of Offences against the Bankruptcy Act, 1861.

By the 24 & 25 Vict. c. 134, s. 221, it is enacted as to misdemeanours under this Act, "From and after the commencement of this Act any bankrupt who shall do any of the acts or things following, with intent to defraud or defeat the rights of his creditors, shall be guilty of a misdemeanour, and shall be liable, at the discretion of the court before which he shall be convicted, to punishment by imprisonment for not more than three years, or to any greater punishment attached to the offence by any existing statute." Offences under this enactment are not triable at quarter sessions. (5 & 6 Vict. c. 38, s. 1.) Then follows a list of the acts which, if accompanied by the intents above mentioned, constitutes the offence alluded to which will be enumerated here in order.

Misdemeanours under 24 & 25 Vict. c. 34.

Punishment.

Not triable at sessions.

2. *Offences
against
Bankruptcy
Act.*

Formerly offences of this nature were felonies under 6 Geo. IV. c. 16 and 12 & 13 Vict. c. 106.

The term "bankrupt" in the above provisions means any person who shall have been under any former Acts, or who shall be by any court under the provisions of the "Bankruptcy Act, 1861," adjudicated bankrupt. (24 & 25 Vict. s. 229.)

The term "court," "the court," "the courts," shall mean the court in London, or any country district court, or any county court acting under the "Bankruptcy Act, 1861," according as such several constructions shall be consistent with the context. (*Id.*)

The "Court of Bankruptcy" shall mean her Majesty's Court of Bankruptcy, constituted under the "Bankruptcy Act, 1861," and the commissioners thereof. (*Id.*)

"Property" means and includes all the real and personal estate and effects of the petitioner or bankrupt within this realm and abroad (except as in the Act provided).

(1.) NON-SURRENDER.

Non-surrender.

(1.) If he shall not, upon the day limited for his surrender, and before three o'clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing to be served on him personally, or left at his usual or last known place of abode or business, and after the notice herein directed in the *London Gazette*, surrender himself to the court, (having no lawful impediment allowed by the court,) and sign or subscribe such surrender, and submit to be examined before such court from time to time.

Appointment of
day for
surrender.

By the 12 & 13 Vict. c. 106, the court has power, after certain preliminaries have been gone through, to appoint two public sittings of the court for the bankrupt to surrender and conform, the last of which sittings shall be on a day not less than thirty days, and not exceeding sixty days from notice by advertisement in the *London Gazette*, which day shall be the day limited for such surrender: Provided also, that the court shall have power, from time to time, to enlarge the time for the bankrupt surrendering himself in such time as the court shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

Power to adjourn.

Venue.

The offence of not surrendering within the above provision is committed at the place where the court sits at which the bankrupt ought to surrender, and, therefore, where he ought to surrender at the district court of Birmingham, in Warwickshire, and does not do so, he cannot be tried in Worcestershire. (*Per Maule, J., Reg. v. Milner, 2 C. & K. 310.*)

As to notice of
time and place
of surrender.

Where there has been a joint adjudication against two bankrupts, both having the same place of business, one notice of the day limited for the surrender left at that place of business is not sufficient service on both bankrupts, but there ought to be a separate and distinct notice left for each. (*Reg. v. Gordon, Dears. C. C. 586; 25 L. J. M. C. 19.*)

Summons.

On an indictment for not surrendering the notices required to be published in the *Gazette* and given to the bankrupt should be stated according to the words of the statute and the notice as given. (*R. v. Frith, 1 Leach, 10.*) The summons to the bankrupt, under 12 & 13 Vict. c. 106, s. 117, need not state that he has been adjudicated bankrupt, but proof must be given on the trial of that fact prior to the issuing of the summons. (*Reg. v. Dealtry, 1 Den. C. C. 287.*) In that case there were two commissioners of the Court of Bankruptcy at Manchester, but the whole court was under one building, and the practice was to allot the flats in rotation to each commissioner, and on a board affixed to the court the flats pending, and the name of the commissioner to whom they were respectively referred appeared. A

summons was issued by one commissioner to the bankrupt to appear at a day and hour named at the Court of Bankruptcy at M. It was held, that proof of the non-surrender of the bankrupt before the commissioner who signed the summons, or at the Court of Bankruptcy at M., without any proof as to the other commissioner, was sufficient to support a conviction for not surrendering. (*R. v. Dealtry*, 1 Den. C. C. 287.)

A bankrupt who was in prison for debt did not surrender to his commission, nor did he apply to have the time for his surrender enlarged, nor did he apply to be brought up to surrender under s. 119 of the Act 6 Geo. IV. c. 16, nor did he give notice to commissioners that he was in prison, it was held, that under these circumstances he was not indictable for not surrendering to his commission, even though the imprisonment could be shown to be collusive. (*R. v. Mitchell*, 4 C. & P. 251.)

By 12 & 13 Vict. c. 106, s. 117, "The court may summon any bankrupt before it, and upon his appearance may examine such bankrupt after he shall have made the declaration contained in the schedule to that Act on matters relating to his trade dealings or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing, which examination, so reduced into writing, the said bankrupt shall sign and subscribe." By sect. 260, "Any person refusing to be sworn or answer a lawful question, or not fully answering on such examination, may be committed to prison without bail until such time as he shall submit himself to answer."

Where a bankrupt surrendered to the fiat for which the petition for adjudication is now substituted, (24 & 25 Vict. c. 134, ss. 229,) and at the time of such surrender refused to answer particular questions concerning his property, but took the oath and assigned as his reason for not answering, that he intended to dispute the commission, such refusal to answer was held not to be indictable as a refusal to submit to be examined, but subjected him only to a committal to prison by the commissioners. (*R. v. Page*, R. & R. C. C. 392; 3 Moore, 656; 1 B. & B. 308; 7 Price, 616, S. C.)

2. Offences against Bankruptcy Act.

Where bankrupt in prison.

Power to the court to examine,

and commit in case of refusal to answer.

What an indictable refusal to submit to be examined.

(2.) NOT DISCOVERING HIS PROPERTY.

(2.) If he shall not upon his examination fully and truly discover to the best of his knowledge and belief, all his property, real and personal, inclusive of his rights and credits, and how, and to whom, and for what consideration, and when he disposed of, assigned, or transferred any part thereof, except such part as has been really and *bonâ fide* before sold or disposed of in the way of his trade or business, if any, or laid out in the ordinary expense of his family, or shall not deliver up to the court or dispose as the court directs of all such part thereof as is in his possession, custody, or power, except the necessary wearing apparel of himself, his wife, and children, and deliver up to the court all books, papers, and writings in his possession, custody, or power relating to his property or affairs.

Not making full discovery of effects, &c.

Not delivering up property and books in his possession.

Up to and until the close of his last examination the bankrupt has a *locus poenitentiae*, and cannot, therefore, until that be finally concluded be indicted for concealing property which he may, upon his last examination, give up. (*R. v. Walters*, 5 C. & P. 138; *Ex parte Bryant*, 1 Gl. & J. 205; *R. v. Evans*, 1 Moo. C. C. 70; *Nash v. Reg.* 4 B. & S. 935; 33 L. J. M. C. 94.)

An indictment against a bankrupt under this enactment for not discovering real property when he transferred it, is bad, if it does not aver that bankrupt had the property and the power to transfer, and did

2. *Offences
against
Bankruptcy
Act.*

transfer it, as well as that he was examined and did not discover such transfer; (*Reg. v. Harris*, 1 Den. C. C. 461; 19 L. J. M. C. 11;) but now after verdict, where the offence charged has been created by any statute, the indictment shall be held sufficient to warrant the punishment prescribed by the statute, if it describe the offence in the words of the statute, (7 Geo. IV. c. 64, s. 21,) therefore, the want of such averments as those referred to in *Reg. v. Harris*, (*ubi sup.*,) is cured by that statute where the offence is described in the words of the 24 & 25 Vict. c. 134, s. 221. (*Nash v. Reg.* (*in error*), 4 B. & S. 935; 33 L. J. M. C. 94.)

The word "property" means and includes all the real and personal estate and effects of the petitioner or bankrupt within this realm and abroad, (except as in the Act provided,) and all the future estate, right, title, interest, and trust of such petitioner or bankrupt in or to any real or personal estate and effects within this realm or abroad, which may revert, descend, be devised, or bequeathed, or come, and all debts due or to be due to him before he shall have obtained his discharge.

(3.) REMOVING, &c., PROPERTY OF THE VALUE OF £10.

Removing, &c.,
property of value
of ten
pounds.

(3.) If he shall after adjudication, or within sixty days prior to adjudication, with intent to defraud his creditors, remove, conceal, or embezzle any part of his property to the value of ten pounds or upwards.

Married woman.

A married woman, not a trader by custom, who has been adjudicated a bankrupt upon her own petition, in the absence of her husband from the country, who is neither an alien nor convict, cannot be indicted, on the ground that the property remains her husband's and does not pass to the assignees. (*Reg. v. Robinson*, 36 L. J. M. C. 78; 1 L. R. C. C. 80.)

As to sufficiency
of indictment.

Though in an indictment it is probably enough to state that the prisoner was adjudged bankrupt after adjudication, yet if the indictment states the special grounds of adjudication, and the grounds stated do not constitute an act of bankruptcy, a conviction thereon will be quashed, (*Reg. v. Massey*, L. & C. C. R. 206; 32 L. J. M. C. 21,) which was decided on the 12 & 13 Vict. c. 106, ss. 70, 251, now repealed, but substantially re-enacted by the above provision and s. 72 of the same Act; but see s. 86.

It is of the essence of the offence that the whole of the goods embezzled should be of the value of ten pounds; if, therefore, no value is laid in the indictment separately to the different articles, but it is simply alleged that the whole are of the aggregate value of ten pounds, and any part of the articles specified are rejected, the court cannot know that the value of the residue is sufficient; a conviction thereon would be bad without amendment, and judgment thereon would be arrested. (*Reg. v. Forsyth*, R. & R. C. C. 274.)

Venue.

Venue may be laid where the concealment of the goods actually took place, (*R. v. Evani*, 1 Moo. C. C. 70,) although the final examination took place in another jurisdiction.

Where the bankrupt produced and delivered up a book on his examination, and signed a memorandum in writing in which he stated that it and other things mentioned in the memorandum contained a full and true disclosure and discovery of his estate and effects, and this book was not produced in evidence at the trial, nor was it shown what had become of it, or that it had been lost, the conviction was held to be wrong, because without the production of the book it could not be known whether the effects had been concealed or not. (*R. v. Evani*, 1 Moo. C. C. 70.)

It is provided by the 24 & 25 Vict. c. 134, s. 229, that as to the computation of time with reference to these offences it is provided, that

Computation
of time.

in all cases in which any particular number of days is prescribed by that Act, or shall be mentioned in any rule or order of court which shall at any time be made under that Act for the doing of any act or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, Monday and Tuesday in Easter week, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

2. *Offences
against
Bankruptcy
Act.*

(4.) NOT DISCLOSING PROOF OF FALSE DEBT TO ASSIGNEES.

(4.) If, in case of any person having, to his knowledge or belief, proved a false debt under his bankruptcy, he shall fail to disclose the same to his assignees within one month after coming to the knowledge or belief thereof.

(5.) OMITTING PROPERTY FROM SCHEDULE.

(5.) If he shall, with intent to defraud, wilfully and fraudulently omit from his schedule any effects or property whatsoever.

(6.) WITHHOLDING PRODUCTION OF BOOKS, &c.

(6.) If he shall after the filing of the petition for adjudication, with intent to conceal the state of his affairs, or to defeat the object of the law of bankruptcy, conceal, prevent, or withhold the production of any book, deed, paper, or writing relating to his property, dealings, or affairs.

The term "petition for adjudication" in this Act means any petition by or against a debtor for adjudication of bankruptcy, and, where in any Act of Parliament, instrument, document, or other proceeding granted, executed, or made before the commencement of this Act, mention shall have been or shall be made of any fiat in bankruptcy or commission in bankruptcy, such Act, instrument, document, or proceeding shall be construed as though such fiat or commission had been a petition in bankruptcy under this Act, so far as the circumstances will admit.

Meaning of term
"petition for
adjudication."

(7.) DESTROYING, &c., BOOKS, &c., RELATING TO PROPERTY OR DEALINGS.

(7.) If he shall, after the filing of the petition for adjudication, or within three months next before adjudication, with intent to conceal the state of his affairs, or to defeat the objects of the law of bankruptcy, part with, conceal, destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified any book, paper, writing, or security, or document relating to his property, trade dealings, or affairs, or make, or be privy to the making of any false or fraudulent entry or statement in or omission from any book, paper, document, or writing relating thereto.

In addition to either of the intents mentioned in this paragraph there must be joined the intent to defraud the creditors in order to constitute a misdemeanour under this section; therefore, where a bankrupt falsified a book so as to deceive his creditors as to the state of his affairs, and to prevent an investigation into certain items for which he desired not to have to account, but not with the intention of defrauding his creditors of any money or property, or to conceal any money or property, or in any way to prevent the creditors from recovering or receiving any part of his estate, or to conceal any misappropriation or

Intent to defraud
an accessory
ingredient

2. *Offences against Bankruptcy Act.*

preference by him, a conviction under this section was quashed. (*Reg. v. Ingham*, *Bell C. C.* 181; 29 *L. J. M. C.* 18; decided upon s. 252 of 12 & 13 Vict. c. 106, now repealed, but in effect re-enacted as above.)

Making away with property.

(8.) MAKING AWAY WITH PROPERTY, &c.

(8.) If, within the like time, (*i.e.*, as in the 7th offence,) he shall, knowing that he is at the time unable to meet his engagements, fraudulently, and with intent to diminish the sum to be divided amongst the general body of his creditors, have made away with, mortgaged, encumbered, or charged any part of his property of what kind soever; or if, after adjudication, he shall conceal from the court or his assignee any debt due to or from him.

Trader accounting for property by fictitious losses.

(9.) TRADER ACCOUNTING FOR PROPERTY BY FICTITIOUS LOSSES.

(9.) If, being a trader, he shall, under his bankruptcy or at any meeting of his creditors within three months next preceding the filing of the petition for adjudication, have attempted to account for any of his property by fictitious losses or expenses.

Fraudulently obtaining goods on credit.

(10.) FRAUDULENTLY OBTAINING GOODS ON CREDIT.

(10.) If, being a trader, he shall, within three months next before the filing of the petition for adjudication, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, have obtained on credit from any person any goods or chattels with intent to defraud.

"Trader."

The word "trader," for the purposes of the "Bankruptcy Act, 1861," means a person who, prior to the commencement of this Act, would have been liable to be adjudicated bankrupt under the laws of bankruptcy then in force. (24 & 25 Vict. c. 134, s. 229.)

Quære, whether a married woman, apart from custom, whose husband is not an alien or convict, though absent from England, would be liable to be adjudicated a bankrupt within this section. (See *Reg. v. Robinson*, 1 *L. R. C. C.* 80; 36 *L. J. M. C.* 78.)

Pawning, &c., goods obtained on credit.

(11.) PAWNING GOODS OBTAINED ON CREDIT.

(11.) If, being a trader, he shall, with intent to defraud his creditors, within three months next before the filing of the petition for adjudication, pawn, pledge, or dispose of otherwise than by *bond fide* transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for.

As to the meaning of the term "trader," see *supra*.

As to indictments generally.

(12.) AS TO INDICTMENTS GENERALLY.

(12.) By 24 & 25 Vict. c. 134, s. 225. In any indictment or information for any misdemeanour under this Act, it shall be sufficient to set forth the substance of the offence charged without alleging or setting forth any debt, act of bankruptcy, petition, or adjudication, or any summons, warrant, order, rule, or proceeding of or in any court acting under this Act.

Before this enactment the indictment must have alleged a trading, petitioning creditor's debt, and act of bankruptcy. (*R. v. Jones*, 4 *B. & Ad.* 345.) But still if the indictment alleges special grounds of adjudication which fail to constitute an act of bankruptcy, such special grounds cannot be treated as surplusage, but render the indictment bad on its face. (*Reg. v. Massey*, *L. & C.* 206; 32 *L. J. M. C.* 21.) It is to be observed with respect to that case, that the indictment alleged the

act of bankruptcy to be the being unable to meet engagements with creditors; and the filing of a petition to the Court of Bankruptcy, and the indictment was held bad because in stating the act of bankruptcy it omitted to state the filing of a declaration of insolvency prior to the petition of adjudication in bankruptcy, but this is no longer necessary, for by the 24 & 25 Vict. c. 134, s. 86, any debtor may petition for adjudication of bankruptcy against himself, and the filing of such petition shall be an act of bankruptcy without any previous declaration of insolvency by such debtor.

Though it is no longer necessary to state in the indictment the facts or proceedings upon which the prisoner had actually become a bankrupt, yet proof must be given of all the ingredients of the bankruptcy. (*R. v. Jones*, 4 B. & Ad. 345; *Reg. v. Lands, Dears. C. C.* 567; 25 L. J. M. C. 14.) All the proceedings, therefore, by which the prisoner was made a bankrupt, as well as the notices requiring him to surrender, if the indictment be against him for not surrendering, must be proved. (1 Atk. 211.) Therefore the trading, petitioning creditor's debt, act of bankruptcy, petition for adjudication, and adjudication must be strictly shown in evidence. (*R. v. Punshon*, 3 Camp. 96; *R. v. Barnes*, 1 Stark. 243; *R. v. Jones*, *ubi sup.*; *R. v. Lands*, *ubi sup.*)

By the 24 & 25 Vict. c. 134, s. 203, proceedings in bankruptcy appearing to be sealed with the seal of any court under that Act, and any writing purporting to be a copy of such proceeding, and purporting to be so sealed, shall be evidence of such proceedings being had or made without any further proof; and by s. 206, a certified copy thereof, or of a petition filed in the insolvent court purporting to be signed by the officer in whose custody the same shall be, or his deputy, and appearing to be sealed with such seal, is made evidence.

Sect. 204. All courts, justices, and persons acting judicially, and other officers, shall take judicial notice of the signature of any commissioner or registrar of the courts, and of the seal of the courts subscribed or attached to any judicial or official proceeding or document to be made or signed under the provisions of this Act.

Formerly, if the act of bankruptcy relied on is a filing by the bankrupt of a declaration of being unable to meet his engagements, followed by a petition for adjudication of bankruptcy, it must be shown that it was filed before the petition; (*Reg. v. Lands*, *ubi sup.*; and see *Reg. v. Massey*, 1 L. & C. 206; 32 L. J. M. C. 21;) but now, by the 24 & 25 Vict. c. 134, s. 86, the filing of such petition is made an act of bankruptcy without any previous declaration of insolvency by such debtor, see *sup.* An indorsement at the back of the declaration, not being part of the declaration, would not be evidence of the time when the same was filed. (See *Reg. v. Lands*, and *Reg. v. Massey*, *ubi sup.*)

A bankrupt's own examination before the Court of Bankruptcy, taken down in writing and signed by him, is admissible against him to prove a criminal charge afterwards made against him, if the examination is taken in strict conformity with the 12 & 13 Vict. c. 106, s. 117, which enacts that the bankrupt may be examined by the court "touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, goods, money, or debts," for the examination is made lawful, and its consequences are therefore lawful, one of which is that what a person says in a lawful examination may be received in evidence against him. (*Reg. v. Scott*, D. & B. 47; 25 L. J. M. C. 128.) In that case the bankrupt's examination was admitted in evidence against him upon an indictment charging him with altering, mutilating, and falsifying his books with intent to defraud his creditors.

The same point was decided in *Reg. v. Cross*, D. & B. 68; and *Reg. v. Robinson*, L. R. M. C. 8; 36 L. J. M. C. 78; and though if the examination goes into matters outside the statutory power to inquire, the bankrupt may object to his examination, yet if he do not do so he

2. Offences against Bankruptcy Act.

Evidence.

If a trader.

Evidence.
Sealed documents.

Certified copies.

Time of filing declaration.

Bankrupt's own examination evidence against, on criminal charge.

2. *Offences
against
Bankruptcy
Act.*

Disclosure by
bankrupt.

The 11 & 12 Vict.
c. 42, applied to
proceedings under
this Act.

As to the costs of
prosecution.

Advertisement
in Gazette to
be evidence of
bankruptcy,
when.

voluntarily submits to the further examination to which he is subjected, and such examination is admissible afterwards against him. (*Reg. v. Sloggett, Dears. C. C. 656* ; *25 L. J. M. C. 93.*) In that case answers by the bankrupt on an examination respecting a letter which did not relate to the bankrupt's trade, dealings, or estate, was held admissible against him on a charge of uttering the same letter knowing it to be forged.

Where a statute protects an offender from liability to be convicted for an offence thereunder, if he shall at any time previously to his being indicted for such offence, have disclosed the same upon any examination, &c., before any commissioner of bankruptcy, it depends upon the sense in which the word disclose is used in the particular Act, whether it means a discovery of what is before unknown, or a mere statement and confession of what was before notorious. It was held on the 5 & 6 Vict. c 39, passed against fraudulent agents and brokers, dealing with property entrusted to them, by nine judges against five, that it there meant discover and make known what was before unknown. (*Reg. v. Skeen, Bell C. C. 97* ; *28 L. J. M. C. 91.*)

Sect. 222. "If it shall at any time appear in any court under this Act that the bankrupt has been guilty of any of the offences in the next preceding section set forth, such court shall have and may exercise such jurisdiction, rights, powers, and privileges, for the summoning, apprehending, committing, remanding, bailing, and otherwise proceeding in respect of such bankrupt, as are exercised by and vested in Her Majesty's justices of the peace in respect of persons against whom a charge or complaint shall have been made before any one or more of the said justices in respect of any felony or indictable misdemeanour committed within the limits of the jurisdiction of such justice or justices ; and all the provisions of the Act 11 & 12 Vict. c. 42, shall, with such variations as the nature of the case may require, extend and apply to the court, and to the commissioners of the London and other District Courts of Bankruptcy, and to the Judges of the County Court acting in matters under this Act, and their proceedings, as well as to justices of the peace and their proceedings."

Sect. 223. "The court may direct that the creditor's assignee, or if there be no creditor's assignee, the official assignee, or any of the creditors of the bankrupt, shall act as the prosecutor in respect of such offence, and shall give to such assignee or creditor a certificate of the court having so directed, which certificate shall be deemed sufficient proof of such prosecution having been directed as aforesaid : and upon the production of such certificate the costs of such prosecution shall be allowed by the court before which any person shall be prosecuted or tried in pursuance of such direction, unless such last-mentioned court shall specially otherwise direct, and when allowed by any such court such sum so allowed shall be ordered by the said court to be paid and borne in all respects in the same manner as the expenses of prosecutions for felonies are now paid and borne, and the same shall be paid and borne accordingly ; and any expenses incurred by such prosecutor other than those so defrayed in accordance with the next following clause, shall be paid out of the account intituled 'the Chief Registrar's Account.'"

As to the meaning of the term "the court," see *ante*, p. 390.

By 12 & 13 Vict. c. 106, s. 233. "That if the bankrupt shall not (if he were within the United Kingdom at the date of the adjudication), within twenty-one days after the advertisement of the bankruptcy in the *London Gazette*, or (if he were in any other part of Europe at the date of the adjudication), within three months after such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action, suit, or other proceeding to dispute or annul the fiat, or the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the *Gazette* containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions

at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged bankrupt, that such person so adjudged bankrupt became a bankrupt before the date and issuing forth of such fiat, or before the date and filing of the petition for adjudication, and that such fiat was issued forth, or such petition filed, on the day on which the same is stated in the *Gazette* to bear date."

Sect. 233. The *London Gazette* containing the advertisement of the bankruptcy is, after the lapse of the prescribed period without proceedings being taken to annul the adjudication, conclusive evidence of the bankruptcy against the bankrupt as well in criminal and civil proceedings. (*Reg. v. Levi*, L. & C. 597; 34 L. J. M. C. 174; *Reg. v. Robinson*, 36 L. J. M. C. 18; L. R. C. C. 80.)

But the *Gazette* is not evidence against parties indicted together with the bankrupt as accessories to the offence charged. (*R. v. Harris*, 4 Cox C. C. 140; and see *Reg. v. Robinson*, *ubi sup.*)

In order to make the *Gazette* admissible in evidence under the 12 & 13 Vict. c. 106, s. 233, proof that the fiat, or now the petition, was not disputed or annulled is a condition precedent, but the sufficiency of the preliminary evidence of those facts is for the judge to decide. (*Reg. v. Harris*, 4 Cox C. C. 140.) In that case a copy of the *London Gazette* was tendered in evidence to prove the bankruptcy before the date and issuing forth of the fiat, and of the date of the fiat, but it was not admitted until it had been proved by the registrar of the bankruptcy court before which the proceedings were laid, that the books containing the entries and minutes thereof had no notice or mention of any step taken by the bankrupt to supersede or dispute the fiat, and the solicitor to the fiat stated that he never heard of any action having been brought to dispute the fiat. The *Gazette* was then put in and read.

By 12 & 13 Vict. c. 106, s. 240, a copy of the *London Gazette*, or of any newspaper containing any such advertisement as is by this Act directed or authorized to be made therein respectively shall be evidence of any matter therein contained, and of which notice is by this Act directed or authorized to be given by such advertisement: and all proceedings or notices required by this Act to be inserted in the *London Gazette* shall be marked with the seal of the court from which such proceedings or notices shall be issued, and certified by one of the registrars of the said court.

Sect. 241. The provisions of the 6 & 7 Vict. c. 85, are made applicable to that Act.

Sect. 242. "In the event of the death of any witness deposing to the petitioning creditor's debt, trading, or act of bankruptcy, under any bankruptcy heretofore or hereafter, or under any petition for arrangement, the deposition of any such deceased witness purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall in all cases be received as evidence of the matters therein respectively contained."

Sect. 236. Any fiat, petition for adjudication, adjudication of bankruptcy, petition for arrangement between a debtor and his creditors, assignment, appointment of assignees, certificate, deposition, or other proceeding or order in bankruptcy, or petition for arrangement under that Act, (the clauses relating to such petition for arrangement are now repealed by 24 & 25 Vict. c. 134,) appearing to be sealed with the seal of the court, or any writing purporting to be a copy of any such document, and purporting to be so sealed, shall at all times and on behalf of all persons, and whether for the purposes of that Act, or otherwise, be admitted in all courts whatever as evidence of such documents respectively, and of such proceedings and orders having respectively taken place, and be made and be deemed respectively records of the court without any further proof thereof, and no such document or copy shall be receivable in evidence, unless the same

2. Offences against Bankruptcy Act.

Of notices.

On death of witness in bankruptcy, depositions to be evidence.

Proceedings in bankruptcy appearing to be sealed to be evidence.

So also a writing purporting to be a copy of proceedings to be sealed.

2. *Offences
against
Bankruptcy
Act.*

appear to be so sealed, except where otherwise in this Act specially provided; but the 2 & 3 Will. IV. c. 114, is not affected thereby.

III. Perjury or Forgery by Bankrupt.

Perjury on
examination.

By 12 & 13 Vict. c. 106, s. 254. "Any bankrupt or bankrupt's wife who shall, upon any examination upon affirmation, or after making and signing the declaration authorized or directed by this or any other Act relative to bankrupts, and any person who shall, upon any examination upon oath or affirmation, or in any affidavit or deposition or solemn affirmation wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury."

Proof of the
filing of the
petition sufficient to found
jurisdiction of
the court.

Where a defendant had petitioned the old insolvency court as a trader owing less than three hundred pounds, and was convicted on an indictment for perjury committed by him before that court at an adjourned hearing of the matters of his petition, and the indictment averred that the defendant was a trader owing less than three hundred pounds, and had resided, as by law required, within the district, it was held that the petition of the defendant, signed by him, and filed in the court for relief of insolvent debtors, wherein he alleged as facts upon which, with others, he founded his application to the court, the same matters as were set forth in the averments were sufficient proof of those averments for the purpose of that prosecution. (*Reg. v. Westley, Bell C. C. 193; 29 L. J. M. C. 35.*)

Inserting advertisement without
authority.

Sect. 272. "Any person who shall insert, or cause to be inserted in the *London Gazette*, or in any newspaper, any advertisement under this Act, without authority, or knowing the same to be false in any material particular, shall be guilty of a misdemeanour."

Forging seal of
commissioner.

Sect. 273. It is made felony to forge the signature of the commissioner or officer, or the seal of the court.

Perjury before
registrar.

By 24 & 25 Vict. c. 134, s. 54. "Parties and witnesses summoned before a registrar, shall be bound to attend in pursuance of such summons, and shall be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena; and all persons wilfully and corruptly swearing or affirming falsely before a registrar shall be liable to all the penalties, punishments, and consequences of perjury."

Perjury by
making false
declaration for
proof of debt.

Sect. 145. "Any person who shall wilfully and corruptly make any declaration for proof of debt as aforesaid, knowing the same, or the statement of account to which the same shall be appended, to be untrue in any material particular, shall be deemed guilty of a misdemeanour, and shall be liable to undergo the pains and penalties imposed upon persons guilty of wilful and corrupt perjury."

Forgery of the
signature of
commissioner, &c.,
and of seal of
court and
documents.

Sect. 205. "If any person shall forge the signature of any commissioner, registrar, or of the master, or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such commissioner, registrar, master, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under the Act 8 & 9 Vict. c. 113."

In order to prove the notice in the *Gazette*, the production of the *Gazette* itself will be sufficient, without proving its being bought of the

Gazette printer, or where it came from. (*Forsyth's case*, R. & R. C. C. 4, *Forms*. 277.) See "*Evidence*," Vol. II.

The defendant may procure an acquittal by proving that he was an infant at the time of contracting the debts mentioned in the indictment, for though such obligations are only voidable by him at his election, no man can be made a bankrupt for debts which he was not compellable to discharge. (*R. v. Cole*, 1 *Ld. Raym.* 443; 12 *Mod.* 243.)

IV. *Forms*.

[Commencement as *ante*, p. 11 (No. 1).]—*For that the said A. B. being a person duly adjudicated a bankrupt, by the district court of bankruptcy of _____, under the provisions of the statutes relating to bankruptcy, unlawfully did not, on the _____ day of _____ A. D., and before three of the clock of the said day, being the day limited in that behalf, by the said court of bankruptcy, for the surrender of the said bankrupt, after notice thereof in writing had been served upon the said A. B. personally, [or as the case may be,] and after the notice thereof given by the said court in the London Gazette as by the said statutes relating to bankruptcy is directed in that behalf, did not surrender himself to the said court, but wholly omitted and neglected so to do, nor has he yet surrendered himself to the said court, with intent thereby then to defraud the creditors of him the said A. B., contrary to the statute in that case made and provided. These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]*

(1.) Commitment of a bankrupt for not surrendering. (24 & 25 Vict. c. 181, s. 221, par. 1.)

[Commencement as *ante*, p. 11 (No. 1). Proceed as in form (No. 1) to asterisk:] *was by the said court summoned to appear and be examined before the said court, and upon being examined before the said court so then having authority to act in the prosecution of the said adjudication against him, the said A. B., and to examine him the said A. B. touching the matters relating to his estate and to his said bankruptcy under the statute aforesaid, unlawfully did not, on the _____ day of _____ A. D., discover certain personal estate, to wit, a certain bill of exchange for £ _____, purporting to be drawn by E. F. upon, and accepted by F. G., of which he, the said A. B. was before then possessed, and which he the said A. B. had before then transferred the same not having been really and bona fide before then sold or disposed of in way of his trade or business, or laid out in the ordinary expense of his family, with intent thereby then to defraud his creditors, contrary to the statute, &c.*

(2.) The like for not discovering his estate, &c. (24 & 25 Vict. c. 184, s. 221, par. 2.)

These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]

[Commencement as *ante*, p. 11 (No. 1). Proceed as in form (No. 1) to the asterisk*, and then:] *On _____, at _____, being after he, the said A. B. had filed the petition of him, the said A. B., to be adjudicated bankrupt as aforesaid [or as the case may be,] [or "within three months next before the adjudication aforesaid"] with intent to conceal the state of his affairs, unlawfully* did destroy [or "conceal, or alter, or mutilate, or falsify, or cause to be destroyed, &c."], certain of his books [or "papers, or writings or securities"], relative to his property, [trade dealings, or affairs, or securities], to wit a certain book called _____, [or from the last asterisk*], did make or was privy to the making of a certain false and fraudulent entry in a certain book of account, or document, called _____, relating to his property [or "trade," &c.] with intent thereby then to defraud his creditors, contrary to the statute, &c.*

(3.) Destroying or falsifying books, &c. (24 & 25 Vict. c. 184, s. 221, par. 27.)

These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]

[Commence as *ante*, p. 11 (No. 1). Proceed as in form (No. 1) to the asterisk* and then:] *On _____, at _____, after the said adjudication of him, the said A. B., to be bankrupt as aforesaid, unlawfully did remove, conceal and embezzle a certain part of his personal estate to the value of £10 and upwards,*

(4.) Concealing or embezzling effects to the value of ten pounds. (24 & 25 Vict. c. 184, s. 221, par. 3.)

4. Forms.

to wit, of the value of £ , [or "certain books of account, or papers, or writings, relating to his personal estate, to wit, a , describe the books, &c.], with intent thereby then to defraud the creditors of him, the said A. B., of the same, contrary to the statute, &c.

These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]

(5.) Obtaining goods by false pretences within three months preceding bankruptcy. (24 & 25 Vict. c. 134, s. 221, par. 10.)

[Commence as ante, p. 11 (No. 1). Proceed as in the form (No. 1) to the asterisk* and then]: *Did, being a trader, unlawfully within three months next before the filing of the petition of him, the said A. B., for adjudication of bankruptcy, to wit, on , at , under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from one E. F. certain goods and chattels, to wit, with intent to defraud, contrary to the statute, &c.*

These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]

(6.) Pawning, &c., goods, &c., obtained by false pretences. (24 & 25 Vict. c. 134, s. 221, par. 11.)

[Commence as ante, p. 11 (No. 1). Proceed as in the form (No. 1) to the asterisk* and then]: *Did, being a trader, with intent to defraud his creditors, within three months next before the filing of the petition of him, the said A. B., for adjudication as such bankrupt as aforesaid, unlawfully, on the day of , paven, [or "pledge," or "dispose of,"] otherwise than by bona fide transactions in the ordinary way of the trade of him, the said A. B., certain goods and chattels of him, the said A. B., to wit, which said goods had before then been obtained by him, the said A. B., on credit, and then remained unpaid for, contrary to the form of the statute, &c.*

These are therefore, &c. [conclude as ante, p. 11 (No. 1.)]

(7.) Indictment against a bankrupt (24 & 25 Vict. c. 134, s. 221) for obtaining goods on credit under false pretences.

—, } The jurors for our Lady the Queen upon their oath present, that hereto-
to wit. } fore and before the committing of the offence by C. D. as hereinafter next
mentioned, the said C. D. was a trader within the true intent and meaning of the laws and statutes then and now in force relating to bankrupts, and was duly declared and adjudged a bankrupt by the Court of Bankruptcy for the district, being then the court duly authorized and competent to adjudicate under the said statutes relating to bankrupts, and the jurors aforesaid, upon their oath aforesaid, do further present that afterwards and whilst the said C. D. was such trader as aforesaid, to wit, on the day of in the year aforesaid, before the said bankruptcy and within three months next before the filing of the petition of him, the said A. B., for adjudication as such bankrupt as aforesaid, unlawfully, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, did obtain from A. B. on credit, to wit, a credit of months from the day and year last aforesaid, divers goods and chattels, to wit , of the value of , the said A. B. being then and there the owner of the said goods and chattels, with intent then and there to defraud, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

[Other indictments can easily be drawn upon the model of the above, referring to the above precedents of commitment for the statement of the offence.]

Baron Court.

What.

Its jurisdiction.

THE Court Baron is a Court which every lord of the manor (anciently called a *baron*) hath within the precinct of that manor. The business thereof is to inquire of matters concerning the lord and tenant in their civil capacity only, as of the death of tenants since the last court, of

alienations, surrenders, encroachments, trespasses, escheats, forfeitures, and such like. But with this court is frequently held, by grant or prescription, a *Court Leet*; the jurisdiction whereof extendeth to all criminal matters within the precinct, for the preservation of the Queen's peace; for which see "*Leet*," Vol. III.

Barratry.

The steward of a court baron is a *judicial* officer; and trespass will not lie against him, where the regular bailiff of the court, by mistake, took the goods of B. under a precept, commanding him to take in execution the goods of A. (*Holroyd v. Breare*, 2 B. & A. 473; and see *Tinsley v. Nassau*, M. & M. 52; 2 C. & P. 582; *Pitcher v. King*, 9 A. & E. 288.) But he would be responsible where he directs the process to bailiffs specially nominated by the party who sues it out, taking an indemnity. (*Bradley v. Carr*, 3 Scott, N. R. 523.)

Liability of steward of.

Barratry.

WHAT it is.—This word *Barratry* we have received either from the Danes or Normans, or both; for *barrata* in the Danish, and *baret* in the Norman, do equally signify a quarrel or contention.

What it is.

And a *barrator*, in legal acceptation, doth signify a *common mover*, *exciter*, or *maintainer* of suits or quarrels, either in courts or in the country. (1 *Inst.* 368; 1 *Hawk.* c. 81, s. 1.)

Barratry in another sense is used to denote a *fraudulent* act of the master or mariners, committed to the prejudice of the owners of the ship; (see *Abbott on Ship*. 161;) offences of which description are provided against by legislative enactments, which will be found more aptly considered under title "*Ships*," Vol. V.

A common mover.—It seems clear that no one can be a barrator in the first sense in respect of one act only; but every indictment for such crime must charge the defendant with being a *common barrator*. (1 *Hawk.* c. 85, s. 5; 8 *Rep.* 36.)

Mover, exciter, or maintainer.—Yet it seemeth that an attorney is in no danger of being judged guilty of an act of barratry, in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. (1 *Hawk.* c. 81, s. 1.)

Also it hath been holden that a man shall not be judged a barrator in respect of any number of false actions brought by him in his own right; for in such cases he is liable to costs. (1 *Hawk.* c. 81, s. 4.)

In Courts.—Either courts of record, or not of record, as in the county, hundred, or other inferior courts. (1 *Inst.* 368.)

Or in the Country.—In three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy, not only by force, but also by subtlety and deceit, and most commonly in suppression of truth and right. 3. By false inventions, and sowing calumniation, rumours, and reports, whereby discord and disquiet may grow between neighbours. (1 *Inst.* 368.)

How punished, &c.—By stat. 34 Edw. III. c. 1, the justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence.

How punished, &c.

And although this statute does not create the offence, but supposes it at common law, and only appoints the punishment, yet an indictment of barratry, concluding *against the form of the statute*, is holden to be

Barratry.

good, and agreeable to many precedents. (*Burton's case*, *Cro. Eliz.* 148; 1 *Hawk.* c. 81, s. 10.)

But it hath been resolved that such indictment is not good, without also concluding *against the peace*; for this is an essential part of it, as being an offence by the common law; (*Id.* s. 12;) the omission, however, would not be cured after judgment by the 7 Geo. IV. c. 64, s. 20, *post*, "*Indictment*," Vol. III.

And it hath been holden that an indictment of this kind may be good, without alleging the offence at any certain *place*; because from the nature of the thing, consisting of the repetition of several acts, it must be intended to have happened in several places; for which cause it is said that a trial ought to be by a jury from the body of the county. (*Id.* s. 11.)

This case, and that of a common scold, seem to be the only offences for which a general indictment will lie, without showing any of the particular facts in the indictment; for barratry is an offence of a complicated nature, consisting in the repetition of divers acts in disturbance of the peace, and it would be too prolix to enumerate them in the indictment; and therefore experience had settled it to be sufficient to charge a man generally as a common barrator, and before the time to give the defendant a note of the particular matters which are intended to be proved against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances; and therefore the court generally will not suffer the prosecution to go on in the trial of the indictment, without such note being given to the defendant. (1 *Hawk.* c. 81, s. 13; 2 *Hawk.* c. 25, s. 59; *PAnson v. Stuart*, 1 *T. R.* 754.)

As to the kind and manner of punishment, it is said that if the offender be a common person, he shall be fined and imprisoned, and bound to his good behaviour, and if he be of any profession relating to the law, he ought also to be further punished, by being disabled to practise for the future. (1 *Hawk.* c. 81, s. 14.)

Bastards.

CONCERNING the *Settlement* of Bastard Children, and the *Removal* of unmarried Women with child, see tit. "*Poor*," Vol. IV.

Concerning the offence of concealing the birth of, see *post*, "*Children*." Herein of—

- I. *Who is a Bastard*, 402.
- II. *Proof of Illegitimacy*, 403.
- III. *Maintenance of Bastards*, 407.
- IV. *Proceedings to obtain Bastardy Order*, 408.
- V. *Forms*, 424.

I. Who a Bastard.

Who a bastard.
Where no
marriage.

A bastard by our *English* laws is one that is not only begotten, but born out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard if the parents afterwards intermarry; and herein they differ most materially from our law; which, though not so strict as to require that the child should be *begotten*, yet makes it an indispensable condition to make it legitimate, that it shall be *born* after lawful wedlock. (1 *Bla. Com.* 454; 2 *Inst.* 96.)

If a woman grossly *enceinte* marry, it is the child of the husband; for when they testify their consent by a public marriage before the birth of the child, it is a public acknowledgment that the child is his, for at that time the child is one with the mother, and therefore in taking the mother, he takes the child with her. (1 *Roll. Abr.* 358; 1 *Inst.* 244; and see *per Lord Ellenborough, C. J., R. v. Luffe*, 8 *East*, 207, 208.)

As all children born before matrimony are bastard, so are all children born so long after the death of the husband, that by the usual course of gestation they could not be begotten by him. But this being a matter of some uncertainty, the law is not exact as to a few days. (*Alsop v. Bowtrell, Cro. Jac.* 541.) And to determine this question the time of gestation and the surrounding circumstances will be considered. (*R. v. Luffe*, 8 *East*, 207.)

So not only the child of a single unmarried woman, but under certain circumstances to be hereafter alluded to, one begotten and born of a woman married at the time, is said to be born out of lawful matrimony.

1. Who a Bastard.

Birth after marriage.

Birth after death of husband.

Illegitimacy where intercourse and birth during wedlock.

II. Proof of Illegitimacy.

Although there be an actual marriage, the marriage may be shown to be *void*, and the illegitimacy established, by a prior marriage, want of age, want of reason, want of consent of parent or guardian, where such consent is necessary, or the non-observance of the solemnities required by the Marriage Act, or by a divorce. (See "*Marriage*," Vol. III.)

But with respect to the non-observance of the solemnities required by the Marriage Act, a strong presumption is raised in favour of the validity of any marriage proved to be celebrated *de facto*, (*Piers v. Piers*, 2 *H. of L. Cas.* 331,) or established by reputation; (*Goodman v. Goodman*, 28 *L. J. Chan.* 745; see *Harrod v. Harrod*, 1 *Kay. & J.* 4;) and this presumption is not rebutted in the case of a minor married by license in her father's life-time, by the mere fact of the mother's name appearing on the register as the consenting party, and no evidence being adduced to establish the consent of the father. (*Harrison v. Corp. of Southampton*, 22 *L. J. Chan.* 722; *Goodman v. Goodman*, 28 *L. J. Chan.* 745; *Gurney v. Gurney*, 32 *L. J. Chan.* 456.)

Children born during lawful marriage are *presumed* to be legitimate, but this presumption may be removed by proof of their illegitimacy.

We will consider how the presumption of legitimacy may be removed;—*first*, in cases where the husband is *alive* when the child is born;—*secondly*, when he is *dead*, before it is born;—and *lastly*, by what *witnesses* it may be rebutted.

Where actual marriage.

Marriage void.

Presumption of legitimacy.

Disproof of it.

1st. *Proof in Cases where Husband Alive at Birth.*—This presumption of legitimacy may be removed by showing that the husband was physically incompetent or entirely absent, so as to have had no intercourse or communication of any kind with the mother, or entirely absent at the period during which the child must in the course of nature have been begotten, or only present under such circumstances as afford clear and satisfactory proof that there was no sexual intercourse. (*Hargrave v. Hargrave*, 9 *Beav.* 552; *Saye & Sele Peerage*, 1 *H. of L. Cas.* 507.) To which may be added, at the present day, proof of a judicial separation, for obedience to such a judicial decree must in the first instance be presumed. (1 *Salk.* 123.)

But where the husband and wife have cohabited together, and no physical incompetency is proved, the issue which might be the result of such cohabitation is conclusively presumed to be so, and therefore legi-

1st. Where husband alive at birth.

2. Proof of Illegitimacy.

timate, though the wife may be shown at the same time to have been guilty of any amount of infidelity. (*Cope v. Cope*, 1 *Moo. & R.* 269; 5 *C. & P.* 604; *Morris v. Davies*, 3 *C. & P.* 215; 5 *Cl. & Fin.* 163, *Wright v. Holgate*, 3 *C. & K.* 158; *Legge v. Edmonds*, 25 *L. J. Chan.* 125; *Atchley v. Sprigg*, 33 *L. J. Chan.* 345.)

Non-access.

Such cohabitation is presumed to have taken place when the parties had such opportunities as rendered it reasonably possible that it could have occurred, but strong, distinct, satisfactory, and conclusive evidence of non-access will rebut that presumption. (*Morris v. Davies*, 5 *Cl. & F.* 163, 265; *Banbury Peerage case*, 1 *Sim. & S.* 153; *R. v. Luffe*, 8 *East*, 207.) The doctrine that no proof of non-access could be admitted if the husband were within the four seas during any part of the time has been long since exploded. (*R. v. Luffe*, 8 *East*, 193; *Pendrell v. Pendrell*, 2 *Str.* 925; *Andr.* 9.) And now evidence of the conduct of the parties and of the circumstances explanatory of it, is admissible to prove non-access, though they were living within fifteen miles of one another, as in *Morris v. Davies*, (*ubi sup.*), or in the same town, as in *Atchley v. Sprigg*, (*ubi sup.*), and in *Sibbett v. Ainsley*, (3 *L. T. N. S.* 583,) or even if the parties have actually met and been alone within four walls, the circumstances attending the *visit* are admissible to show that no connection took place between them. (*Morris v. Davies*, (*ubi sup.*); see *Atchley v. Sprigg*, (*ubi sup.*); *Gurney v. Gurney*, 32 *L. J. Chan.* 456.)

The evidence of non-access must show an absence during such a time as would in the ordinary course of nature negative the possibility of the child having been procreated by the husband. Not only absence prior to and at the time of conception, and continually till the birth, (*R. v. Alberton*, 1 *Ld. Raym.* 395; 2 *Salk.* 483, *Co. Litt.* 244,) but also absence up to within a fortnight prior to the birth, (*R. v. Luffe*, 8 *East*, 207; *R. v. Maidstone*, 12 *East*, 550; *Banbury Peerage case*, 1 *Sim. & S.* 153,) or even to within six months prior to the delivery (*Heathcote's Divorce*, 1 *H. of L.* 277) has been deemed sufficient.

Adultery.

No amount of adultery on the part of the wife, without some proof of non-access by the husband, will rebut the presumption of legitimacy arising from the possibility of cohabitation. Thus, if, where the wife is living separate from her husband, and with the paramour, and children born during the adulterous intercourse were called by the name of the paramour, the presumption of legitimacy was not rebutted; (*Reg. v. Inhabitants of Mansfield*, 1 *G. & D.* 7; 1 *Q. B.* 44; *Legge v. Edmonds*, 25 *L. J. Chan.* 125;) but the adultery of the wife and her conduct, and that of the paramour in relation to a child born during their adulterous intercourse, are circumstances fit to be taken into consideration with other facts tending to establish the non-access of the husband and the illegitimacy of the child. (*Morris v. Davis*, (*ubi sup.*); *Gurney v. Gurney*, (*ubi sup.*); *Atchley v. Sprigg* (*ubi sup.*); *Thompson v. Saul*, 4 *T. R.* 356; *Saye & Sele Peerage*, 1 *H. of L.* 507.)

Thus a separation, the notoriety of the adultery, birth of a child and concealment of the birth from the knowledge of the husband, denial of the fact by the wife when charged with it by the husband, conduct of the husband ignoring any such child, maintenance and education of the child under the care of the adulterer's friends, are facts capable of rebutting the *prima facie* presumption arising from the birth of the child during wedlock, and the personal communication of husband and wife at intervals during the separation. (*Morris v. Davies*, *ubi sup.*; *Gurney v. Gurney*, *ubi sup.*)

So all the circumstances under which the husband and wife have met, may be shown to negative the inference of sexual intercourse on the occasion. (*Atchley v. Sprigg*, 33 *L. J. Chan.*)

Divorce.

Divorce.—Proof of decree of judicial separation since 11th January, 1858, or a *divorce à mensa et thoro* will be *prima facie* evidence of non-

access, and the children born during the separation are *primâ facie* bastards till access be proved. (*St. George & St. Margaret*, 1 Salk. 123.)

2. *Proof of Illegitimacy.*

2nd. *Incompetency.*—Proof of physical impossibility on the part of the husband to procreate the child will be sufficient proof of its illegitimacy; as if the husband be only eight years of age, (1 *Roll. Abr.* 359,) or under fourteen, (1 *Hale*, 630; *R. v. Brimilow*, 2 *Moo. C. C.* 122; *R. v. Groombridge*, 7 *C. & P.* 582; *R. v. Jordan*, 9 *C. & P.* 118,) or if he is diseased, infirm, or bedridden; (*R. v. Luffe*, 8 *East*, 200; and see *Foxcraft's case*, 1 *Roll. Abr.* 359; 1 *Bott.* 445;) so proof of inability, from a bad habit of body going to an impossibility and not merely an improbability, will be enough. (*Lomas v. Holmden*, 2 *Stra.* 940, per Lord Ellenborough; *R. v. Luffe*, 8 *East*, 207.)

2nd. Incompetency.

The natural impediment must be shown to exist continually during the time which in the course of nature must have passed between the generation and birth, and which is best ascertained by means of medical testimony. Such testimony is usually the result of a consideration of the circumstances surrounding the party; (*Legge v. Edmonds*, 25 *L. J. Chan.* 153;) thus, though the adultery of the wife is immaterial—where access and physical ability on the part of the husband are shown, yet it cannot be excluded from the cognizance of a medical witness, who may deem it a material ingredient in determining the result of his testimony as to the husband's incapacity; (*Legge v. Edmonds*, *ubi sup.*;) but the non-existence of children during a period long antecedent to adultery is not material if there was access, and a physical possibility of the husband being the true parent. (*Routledge v. Carruthers*, 4 *Dow. H. of L. Cas.* 392; *Legge v. Edmonds*, 25 *L. J. Chan.* 133.)

Direct Proof of non-access will of course be sufficient to establish the illegitimacy. (*R. v. St. Bride*, 1 *Stra.* 51; *Pendrell v. Pendrell*, 2 *Stra.* 925, 1073; *R. v. Maidstone*, 12 *East*, 550; *Morris v. Davies*, *ubi sup.*)

Direct proof of non-access.

3rd. *Proof in Cases where Husband Dead at Birth.*—It is a general rule, that if the child comes into the world within the usual period of gestation, it is to be considered legitimate; if beyond that period, illegitimate. (*Radwell's case*, *Co. Litt.* 124 b.)

3rd. Where husband dead at birth.

The court will take judicial notice of the period of gestation, and therefore the course of nature need not be proved.

"The usual period of gestation is nine calendar months, but there is very commonly a difference of one, two, or three weeks. A child may be born alive at any time from three months, but we have seen none born with powers of coming to manhood or of being reared before seven months or near that time; at six months it cannot be. I have known a woman bear a living child in a perfectly natural way, fourteen days later than nine calendar months; and I believe two women to have been delivered of a child alive in a natural way, above ten calendar months from the hour of conception." (*Harg. & But. Co. Litt.* 123 b. *Information from Dr. Hunter.*)

The period of gestation is never so short as six months. (*Heathcote's Divorce*, 1 *Macq. Sc. Cas. H. of L.*, 277.)

In a case where the wife was a lewd woman, and she was delivered of a child forty weeks and ten days after the death of the husband, it was held legitimate. (*Hale's MSS.*; *Stark. Evid. Part IV.* 221, n. (a).) So where the child was born forty weeks and eleven days after the death of the first husband. (*Hale's MSS.*; *Alsop v. Bowtrell*, *Cro. Jac.* 541; *Godb.* 281.)

If a man die, and his widow soon after marry again, and a child is born within such time as renders it dubious, from the course of nature, to which husband it belongs, the issue is said to be more than ordinarily legitimate, and may, upon arriving at the years of discretion, choose

2. Proof of Illegitimacy. which of the fathers it pleases. (1 *Bott*, 444.) But the question as to which is its father is for a jury to decide on. (*Hale's MSS.*; *Cro. Jac.* 615; *Litt. Rep.* 177.)

4th. Who may prove illegitimacy, and how.

4th. *What Witnesses may prove Illegitimacy, and how.*—Any persons usually competent may be called to prove the illegitimacy.

The father and mother may be called to prove the legitimacy, (*Lomax v. Lomax*, *C. T. H.* 380; *B. N. P.* 241; *Pendrell v. Pendrell*, 2 *Str.* 925,) or the illegitimacy, (14 & 15 *Vict. c.* 99, s. 2,) provided their evidence does not prove non-access, directly or indirectly.

Mother's evidence.

So in the case of *R. v. Bramley*, (6 *T. R.* 330,) Lord *Kenyon*, C. J., said: "The evidence of the mother to prove that she and her supposed husband were never legally married was certainly admissible, though the justices at the sessions were to judge of the effect of it;" or to negative the fact of marriage, or prove the circumstances attending the marriage so as to show its illegality or legality. (*R. v. Bramley*, 6 *T. R.* 330.)

Husband.

So the husband may be called to prove the illegitimacy of the son, provided his evidence does not go to show non-access, either directly or indirectly. (*R. v. St. Peter's*, 2 *Burr.* 25.)

If mother a married woman may not give evidence as to non-access.

After marriage the mother or her husband cannot be called as a witness as to the legitimacy or illegitimacy of her own child born during lawful wedlock, and therefore may not answer any question, whether put on examination or cross-examination, directly or indirectly tending to show non-access, if put with reference to that object, and the question, if put and answered, must be rejected. (*Atchley v. Sprigg*, 33 *L. J. Chan.* 345; *Legge v. Edmonds*, 25 *L. J. Chan.* 125; *R. v. Sourton*, 5 *A. & E.* 180; *R. v. Kea*, 11 *East*, 132; *Goodright v. Moss*, 2 *Cowp.* 591; *R. v. Reading*, *Ca. temp. Hardw. K. B.* 79.) Thus an answer to the effect that the husband deserted the mother nine years before the birth of the child, would be inadmissible unless the presumption of non-access had been raised by previous evidence. (*Yate v. Chippendale*, 11 *C. B. N. S.* 512.)

But after non-access is proved may fix the father of the child.

Nor, as a general rule, can the declaration of a mother attempting to prove the non-access of her husband, or attempting to bastardise her child, be admitted. (*Legge v. Edmonds*, 25 *L. J. Chan.* 138; *Atchley v. Sprigg*, 33 *L. J. Chan.* 345; *Goodright v. Moss*, 2 *Cowp.* 591.) And therefore, although after proof *alivunde* of non-access, the declaration of the mother of her adultery would be admissible to fix the paternity of the child, yet her declaration of adultery when offered where the sole question is access or non-access, so as to bastardise the child, would not be admissible. (*Legge v. Edmonds*; *R. v. Sourton*, *ubi sup.*; *R. v. Reading*, 2 *Sess. Cas.* 175; *R. v. Luffe*, *ubi sup.*; *Yates v. Chippendale*, 11 *C. B. N. S.* 512.) But if the fact of non-access is found upon evidence independent of the mother's, it is immaterial that in addition to fixing the father, she should have given evidence of such fact. (*Yates v. Chippendale*, 11 *C. B. N. S.* 512.)

The conduct of the husband and wife towards a person asserted to be their legitimate or illegitimate child is in some cases admissible evidence upon the question whether the husband and wife had sexual intercourse at such time as by the course of nature that child might have been the fruit of such intercourse. (*In re Sinclair*, 17 *Beav.* 523; *Bambury Peerage case*, 1 *Sim. & S.* 153; *Legge v. Edmonds*, 25 *L. J. Chan.* 139.) But conduct and declaration are not identical, but a declaration, otherwise inadmissible may become admissible, by being coupled with a further external act; but committing to paper thoughts passing in the mind, is not a sufficient external act, though it may be that a declaration of adultery sent by post to the adulterer, and kept by him in his possession without taking any notice of it, would be an act of conduct admissible in evidence. (*Legge v. Edmonds*, *ubi sup.*; *Morris v. Davies*, *ubi sup.*)

If the mother were *bonâ fide* called, with a view to some distinct point in the cause, and her evidence given with such object tended to prove non-access, the case might be different. (*R. v. Sourton*, 5 A. & E. 185, per Lord Denman.)

The rejection of the evidence of the mother or her husband as to non-access after marriage is on the general ground of decency, morality, and policy; (*Goodright v. Moss*, 2 Cowp. 594; *Legge v. Edmonds*, *ubi sup.*; *Taylor on Evidence*, 4th ed., Vol. I., p. 821;) and therefore the same rule prevails, although at the time of the examination of the mother the husband were dead. (*R. v. Kea*, 11 East 132.)

If the fact of non-access is found by the justices, upon evidence independent of the mother, a married woman, it is immaterial that she should have given evidence to that fact. (*Yates v. Chippindale*, 11 C. B. N. S. 512.)

The parents' declaration, on oath or otherwise, may be adduced as evidence *after their decease*, of the fact of marriage and of the time of birth; (*Anon.* 12 Vin. 247; *B. N. P.* 294; *R. v. Bramley*, 6 T. R. 330; *Vowels v. Young*, 15 Ves. jun. 148;) but not in their lifetimes, except for the purpose of contradicting them; (see 2 *Str.* 925; *B. N. P.* 113;) and the declarations of the wife are not admissible to prove her son not to be the son of her husband but of another man. (*R. v. Cope*, 1 M. & Rob. 275.) Nor can the declaration of a father or mother be received after their deaths to prove the want of access, so as to bastardise a child born during the coverture, for they could not be examined to the fact if alive. (1 *Nolan*, 335.)

The declarations or memorandums of deceased members or relations of the family, or perhaps of others, such for instance as a surgeon living in the habits of intimacy with them, may be admitted in evidence. (See *Higham v. Ridgway*, 10 East, 120; 3 T. R. 723; *B. N. P.* 295; 1 M. & S. 689; 2 Vin. Abr. Evid. T. b, 91.)

The complainant as well as the putative father are competent and compellable now to give evidence. (14 & 15 Vict. c. 99, s. 2.) And the 11 & 12 Vict. c. 43, applies to the backing of warrants for compelling the appearance of the putative father.

3. Maintenance of Bastards.

Declaration by parents and others.

Compelling parents to give evidence.

III. Maintenance of Bastards.

At common law a father is not liable for the support of his child legitimate or illegitimate, unless he enter into some express or implied promise to become so, for it considers moral duties of this nature like others of imperfect obligation as better left for their performance to the impulse of nature. (*Mortimore v. Wright*, 6 M. & W. 482; *Seaborne v. Maddy*, 9 C. & P. 497.) Even where the putative father has made various payments for maintenance; and then refused to continue the support of the child, unless and until the mother obtained an order of filiation, it was held that no action would lie at the suit of the mother for arrears of maintenance; (*Furillio v. Crowther*, 4 D. & R. M. C. 1;) and since the 4 & 5 Will. IV. c. 76, s. 71, a promise by the father of an illegitimate child to pay the mother if she will support the child is void, as made without consideration. (*Crowhurst v. Laversack*, 8 Exch. 208; 22 L. J. Ex. 57.)

But where the father made a contract with the mother of two of his bastard children, that in consideration that she would take charge of and supply them with necessaries for their use and benefit, that he would pay fifty pounds a year, quarterly, it was held that there was a good consideration for the contract, so as to make it binding, inasmuch as under the 7 & 8 Vict. c. 101, sect. 3, the justices have power to make an order on the putative father for the maintenance of

Liability father

By contract.

3. Maintenance of Bastards.

the child, "if they see fit, having regard to all the circumstances of the case," and as in the face of such a provision the justices would never make an order upon him, the whole liability would be cast upon the mother, and that would be a sufficient consideration to support the promise by the father; (*Smith v. Roches*, 6 C. B. N. S. 223; 28 L. J. C. P. 237;) and again, a contract by the father to pay the mother for the support of a bastard child a weekly sum, was held good in *Follit v. Koetzow*, 2 E. & E. 730; 29 L. J. M. C. 128.

Liability of the mother.

The only means therefore to secure the maintenance of a bastard by its father, are by virtue of the statutes 7 & 8 Vict. c. 10, and 8 Vict. c. 10.

The whole liability of the mother is also created by statute 4 & 5 Will. IV. c. 76, s. 71, and is only personal. It is limited to the time during which she remains unmarried, or a widow, and until the child attains the age of sixteen. And there is no provision by which, when she dies and leaves an illegitimate child under sixteen surviving her, and leaves money which might be sufficient to provide for its maintenance, that that money shall be so applied by her representative. (*Ruttinger v. Temple*, 33 L. J. Q. B. 1; and see 4 & 5 Will. IV. c. 76, s. 71.)

Neglecting child.

At common law a parent might, under certain circumstances, be indicted for not supplying an infant with necessities, but perhaps this is because she has the custody of the child, not because she is its mother. (*Ruttinger v. Temple*, *ubi sup.*, per *Blackburn*, J.) And where a bastard child was born, for whose support the parents neglected to provide necessities, the parish officers were obliged to do it without an order of justices for that purpose. (*Hays v. Bryant*, 1 H. Bl. 253.)

Mother punishable for neglect or desertion of child.

By the 7 & 8 Vict. c. 101, s. 6, it is enacted, "that every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle or disorderly person, under the provisions of an Act made and passed in the 5th year of King George the IV., entitled 'An Act for the punishment of idle and disorderly persons, and rogues and vagabonds in that part of the United Kingdom, called England,' and every woman so neglecting to maintain her bastard child after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last recited Act."

Penalties for promoting marriage of a mother of a bastard by threats, &c., or misapplying moneys in maltreating a bastard.

By the 7 & 8 Vict. c. 101, s. 8, it is enacted that if any officer of a union, parish, or place, endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced, with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanour; and any person having the custody of any bastard child under any order of justices as herein before provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds.

IV. Of Proceedings to obtain Bastardy Orders.

[7 & 8 Vict. c. 101; 8 Vict. c. 10.]

All powers for obtaining or making an order upon any putative father for the maintenance of a bastard child, are provided by the statutes 7 & 8 Vict. c. 101, and 8 Vict. c. 10.

The 7 & 8 Vict. c. 101, came into operation on the 9th day of August, 1844, and provides, by section 2, "That any single woman who may be with child, or who may be delivered of a bastard child after the passing of that Act, may either before the birth or at any time within twelve

Woman may apply before or

months from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child, has within the twelve months next after the birth of such child, paid money for its maintenance, make application to any one justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place in which she may reside, for a summons to be served on the man alleged by her to be the father of such child, and if such application be made before the birth of the child, the woman shall make a deposition upon oath, stating who is the father of such child, and such justice of the peace shall thereupon issue his summons to the person alleged to be the father of such child, to appear at a petty sessions to be holden after the expiration of six days at least, for the petty sessional division, city, borough, or other place in which such justice usually acts."

By 8 & 9 Vict. c. 10, sect. 4, it is enacted that the said justice to whom any application shall be made by any such woman being pregnant shall summon the man to appear at some petty sessions at which he usually acts, to be held on a day after the time when the said mother shall expect the said child to be born, provided that if on such day the woman shall not have been delivered, or the justices shall be satisfied that she has been delivered at such a short period before such day, that she cannot appear at the said session, it shall be lawful for the justices thereat to adjourn the hearing of the said case, until some other day, and so from time to time until the child shall have been born, and the woman shall be able to attend at the said session; and it shall be lawful for the justices at their petty sessions, to make an order in respect of any such application so made by such woman so pregnant, to a justice as aforesaid, if she apply at such petty sessions within the space of two calendar months from the birth of the child, although more than forty days shall have elapsed from the time when the summons was served upon the alleged father, or was left at his last place of abode.

By whom application to be made, and when, and to whom—The term single woman in the 7 & 8 Vict. c. 101, s. 2, does not only mean one who has never been married but includes a widow, (*Reg. v. Wymondham*, 2 Q. B. 541; *Antony v. Cardenham*, *Fost.* 309; 2 *Bott.* 194,) and a married woman living separate from her husband, (*Reg. v. Collingwood*, 12 Q. B. 681; 17 *L. J. M. C.* 168; *Reg. v. Pilkington*, 2 *E. & B.* 546, *sub. nom.*; *ex parte Grimes*, 22 *L. J. M. C.* 153,) but a child born of a foreign woman out of England, cannot be a bastard within these Acts. (*Reg. v. Blane*, 3 *N. S. C.* 597; 18 *L. J. M. C.* 216.)

Provided the application for it is made within twelve months after the birth of the child, the summons need not be issued till after the twelve months has expired, so long as it issue as soon as it can be made available in the opinion of the justice, (*ex parte Harrison*, 16 *Jur.* 726,) and the justice need not adjourn the case for the purpose, and a second application would be deemed, under the circumstances, a continuation of the first; (*Potts v. Cumbridge*, 8 *E. & B.* 847; 27 *L. J. M. C.* 62; see *ex parte Harrison*, 16 *Jur.* 726;) as for instance, where the putative father has absented himself, and his whereabouts are not known when the application is made, and are not discovered till after the twelve months has expired; (*Potts v. Cumbridge*, *ubi sup.*;) but inasmuch as only the justice to whom an application is made within the twelve months, can thereupon issue his summons, if the justice die after the twelve months have expired and before the summons be issued, no proceedings can be taken on such application. (*Reg. v. Pickford*, 1 *B. & S.* 77; 30 *L. J. M. C.* 133.)

On an application after twelve months from the birth, there ought to be evidence on oath of the payment of money within twelve months before the summons issue, and the summons should be in the form given by the Act of Parliament, *post*, p. 425, but any objections on the ground of the absence of such proof, affect only the regularity of

4. *Proceedings to obtain Bastardy Orders.*

after birth of child to a justice for a summons to petty sessions on the putative father.

Fixing time for appearance of father on application before birth.

Single woman.

Application within twelve months after birth, when, to be made.

Proceedings on application made more than twelve months after birth.

4. *Proceedings to obtain Bastardy Orders.*

Proof of payment of money.

the summons, for the proceeding is in the nature of a civil suit within the 14 & 15 Vict. c. 99, ss. 2, 3, and therefore if the defendant appears, and without objection defends the case, and gets a decision on the merits, he waives the irregularity in the process, and by so doing gives the court jurisdiction to hear and decide the suit; (*Reg. v. Berry, Bell. C. C. 46*; 28 *L. J. M. C. 86*; see *per Willes, J., Smith v. Roche*, 6 *C. B. N. S. 223*; 28 *L. J. C. P. 237*; and see *Reg. v. Lightfoot*, 6 *E. & B. 822*; 25 *L. J. M. C. 115*;) or if he appear and give evidence on his own behalf, (*R. v. Simmons, Bell. C. C. 168*; 28 *L. J. M. C. 183*;) but if the objection were taken and insisted upon, probably it would be fatal, (*R. v. Berry, ubi sup.*) and the mere appearance of the defendant without more would probably not be deemed a waiver of the irregularity. (*R. v. JJ. of Carnarvon*, 5 *Nev. & M. 364*.)

So if the putative father appear at the petty sessions, and without objecting to the irregularity of the summons, give notice of appeal and enter into recognizances, he will not be allowed afterwards to object that there was a want of jurisdiction. (*Reg. v. Justices of Wiltshire*, 12 *A. & E. 793*; *Reg. v. Stoddart*, 1 *G. & D. 654*.)

To whom application to be made.

By the above section the application for the summons may be made by the woman to any one justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place in which she may reside.

What is a petty sessional division, 8 Vict. c. 10.

The term petty sessional division is defined by the 8 Vict. c. 10, s. 10, to be and "include any division of a county, riding, or division, having a separate commission of the peace in which one or more petty sessions have been or shall be usually held, or any division for the holding of special sessions formed or to be formed under the provisions of the Act of 9 Geo. IV. c. 43, or of 6 Will. IV. amending the same, and that where there are two or more petty sessions usually held in such division, or where any justice acts for two or more of such divisions, he shall require the party whom he shall summon under the authority of "the 7 & 8 Vict. c. 101, to appear at the petty session to be held in any such division, as he shall deem fit." And by 12 Vict. c. 18, s. 1, every sitting and acting of justices of the peace, or of a stipendiary magistrate in and for any city, borough, or town corporate, having a separate commission of the peace or any part thereof, within England and Wales, at any police court, or other place appointed in that behalf, shall be deemed a petty sessions of the peace, and the district for which the same shall be holden shall be deemed a petty sessional division, within the meaning of any Acts of Parliament already made, or hereafter to be made, having relation to such petty sessions, or to any business to be transacted thereat.

9 Geo. IV. c. 43.

12 Vict. c. 18.

To what justice.

The justice to whom application for a summons is made, must answer the descriptions above mentioned, or the summons and all the proceedings founded upon it will be void, for the section is imperative and not directory. (*R. v. Hickling*, 7 *Q. B. 889*; 15 *L. J. M. C. 23*; *Reg. v. Martin*, 2 *Q. B. 1037*; *Sharp v. Aspinall*, 10 *B. & C. 47*.) A woman is deemed to reside in a place where she went to lodge for the purpose of affiliating the child, if she has no other home at the time, and she went there because it was the most convenient place with reference to the meeting of the magistrates for the division, and not for the purposes of fraud, or of harassing the putative father, (*Reg. v. Hughes, D. & B. 188*; 26 *L. J. M. C. 133*;) but if a woman goes to lodge in a particular jurisdiction for the mere purpose of getting an order from the justices of that jurisdiction, after having had her application twice dismissed on the merits in another jurisdiction, and without the intention of staying longer than might be necessary for that purpose, she does not reside there for the purpose of giving the justices jurisdiction. (*Reg. v. Myott*, 32 *L. J. M. C. 138*.)

Residence of woman, what.

Proceedings on the hearing at petty sessions.

Hearing.]—By 7 & 8 Vict. c. 101, s. 3, it is enacted "that after the birth of such bastard child, on the appearance of the person so summoned,

or on proof that the summons was duly served on such person or left at his last place of abode six days at least before the petty sessions, the justices in such petty sessions shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child."

By 8 Vict. c. 10, s. 7, "It shall be lawful for any woman who shall apply to the justices at any petty sessions for any such order as aforesaid, (*i. e.*, bastardy,) to be assisted in her application by counsel or attorney, and for any person summoned under the said Act (7 & 8 Vict. c. 101) to appear at any such petty sessions as the alleged putative father to appear and make his answer thereto by counsel or attorney, and it shall be lawful for either of such parties to have all witnesses examined and cross-examined by such counsel or attorney."

The appearance of the defendant may be in person or by his attorney, and such appearance was sufficient even before 8 Vict. c. 10. (*R. v. Shipperbottom*, 10 Q. B. 514; 16 L. J. M. C. 113.)

Service of summons.—If the defendant do not appear in person nor by attorney, proof must be made of service of the summons upon him, either personally or by leaving the same at his last place of abode six days at the least before the petty sessions.

It is prudent for the officer to take a duplicate summons which had been examined with the original with him, and indorse a memorandum of the fact and manner of service thereon as soon as convenient after the service.

By the words, "last place of abode," is meant the present place of abode if the party have any; the last which he had if he has ceased to have any. It is not, therefore, sufficient, in default of personal service, to serve it at a house where the defendant formerly lodged but did not lodge at the time of service, where it never reached him till after the day the order was made, although the server believed him to reside there and the mistress of the house said his clothes were still there; (*Reg. v. Evans*, 19 L. J. M. C. 151;) but to leave it at the house of the defendant's father, with whom the defendant had always lived up to a fortnight before the service, and which place he left in anticipation of the bastardy proceedings, was held a good service, although he at the time thereof was residing and had obtained employment on a farm in a different part of the country, and, as he stated, had ceased to reside with his father and had no intention of returning to him, and was not aware of the proceedings till they were over. (*Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116.) In that case the court deemed the residence away from his father's to be but temporary and that he had acquired no fresh permanent abode. (*Id.*) But a temporary absence from home when the summons was served and no notice of it, is a ground for an application to the discretion of the justices to adjourn the hearing. (*Reg. v. Brown*, 1 L. T. N. S. 29.)

If the magistrates act upon what they deem to be clear proof of service, either personal or at the defendant's last place of abode, the order is in the first instance made with jurisdiction, although it is open to the defendant afterwards, upon affidavit, to show the court that the fact upon which the justices proceeded failed and injustice has been done thereby, and so obtain a *certiorari* to bring it up for the purpose of quashing it. (*Reg. v. Evans*, 1 L. M. & P. 357; 19 L. J. M. C. 151.) As, for instance, that the service, if personal, was made by mistake on the wrong person, or, if not personal, that the place whereat the summons was left was not his last place of abode, and in either case that he was not the father, and knew not of the proceedings. (*Id.*)

4. *Proceedings to obtain Bastardy Orders.*

Parties may appear and be heard by counsel or attorney.

Mode of service of summons.

Last place of abode.

4. *Proceedings to obtain Bastardy Orders.*

But on a rule to quash the proceedings the party's affidavit must show that he is not the father. (*Reg. v. Davis*, 22 L. J. M. C. 143.)

To prove the fact of the abode being the last place of abode it is not enough to show that inquiries have been made for the defendant at his lodgings, and the statements made by the person at the house. The person of the house should be produced. (See *Robinson v. Marks*, 2 Moo. & R. 375; *Doe v. Powell*, 7 C. & P. 617.)

The service of a summons beyond the limits of England and Wales—for instance, in Scotland—is not due service upon which the justices can proceed in case of the defendant's non-appearance at the hearing. (*Reg. v. Lightfoot*, 6 E. & B. 822; 25 L. J. M. C. 115.)

Six days at the least.

In computing the six days at the least the day of the service and of the hearing must be excluded, and no fraction of either day can be taken into consideration, as the whole of each day must be excluded. (*Reg. v. Justices of Middlesex*, 2 N. S. C. 73; 14 L. J. M. C. 139; *Mitchell v. Foster*, 12 A. & E. 472; *R. v. Justices of Shropshire*, 8 A. & E. 173; *Zouch v. Empsey*, 4 B. & Ald. 522.)

Metropolitan police magistrate.

By 8 Vict. c. 10, s. 9, "Any one magistrate of the police courts of the metropolis, sitting at a police court within the metropolitan police district, has and shall have full power to issue summonses for the appearance of parties and witnesses before such police court, and to do alone any other thing in any matter of bastardy arising under the said Act, within those parts of the said district for which a police court has been or shall be established, which may be done by any justices at a petty sessions holden for their several petty sessional divisions in any such matter arising within their divisions respectively, and that the sitting of such magistrate at such police court shall be within all the provisions of the said Act, (7 & 8 Vict. c. 101,) and of this Act concerning a petty sessions of justices."

Compelling attendance of witnesses.

By 7 & 8 Vict. c. 101, s. 70, "In any proceedings to be had before justices in petty or special sessions or out of sessions, under the provisions of that Act or of any of the Acts required to be construed as one Act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings; and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expenses of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be brought before him or any justices before whom such proceedings are to be had, and if any person coming or brought before any such justices in any such proceeding refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be sufficient warrant for the discharge of such person."

As no particular time or sessions is fixed for making the application, except that it must be made within twelve months unless payment has been made by putative father, the justices have general jurisdiction, and if the first applied to refuse to make any order, or having made it refuse to sign it, or if they make an invalid order, any other two justices of the jurisdiction may hear the evidence and make the order upon a fresh application. (*Reg. v. Brisby*, 2 C. & K. 962; 18 L. J. M. C. 157.)

Cases where there has been a previous application dismissed on the merits.

If on the hearing it is objected that the matter has been previously heard on a prior application and dismissed by other justices on the merits, the jurisdiction of the justices is not thereby ousted, but they

must go on and decide whether this answer, that there was a former decision on the merits in the favour of the father, is made out, and if they think the proof of that fact fails they should go on and hear the application. (*Reg. v. Justices of Bucks*, 3 N. S. C. 500; 18 L. J. M. C. 113.)

But further, if it should be made out that the case has been heard and dismissed on the merits, it is in the nature of a nonsuit to the action, and as the applicant may have brought further evidence which she has discovered since the first hearing, the justices should go on and decide on the hearing of the case on the second application as presented to them. (*Reg. v. Machen*, 14 Q. B. 79; 18 L. J. M. C. 213; *Ex parte Westerman*, 16 L. T. 420; *Reg. v. Grant*, 36 L. J. M. C. 89; *sub nom. Reg. v. Gaunt*, 2 L. R. Q. B. 466.)

If, however, it should be made out that the matter was fully inquired into on the first application, though that is no bar as a matter of law, the justices would reasonably feel great reluctance in coming to a different decision from the former petty sessions if no fresh facts had intervened; (*Reg. v. Grant, ubi sup.*;) but after the previous hearing there must be a fresh application and summons thereon, for the former application is spent by the first hearing, and there is no jurisdiction to hear the case a second time on the same application. (*Reg. v. Thomas*, 8 L. T. N. S. 60.)

Evidence.—It is not absolutely necessary that the mother should be examined if the case can be otherwise proved, but if she is heard, then her evidence must be corroborated in some material particular by other testimony to the satisfaction of the justices, who, taking care that there is some evidence of that nature, are, therefore, the only judges of its weight. It is a corroborating circumstance that the defendant has been seen with the woman at the time and place fixed by her as the occasion of the connexion from which the conception of the child resulted under circumstances which would have allowed of the connexion taking place. So proof of any admission made by the defendant that the child was his or that he had had connexion with her. If there be some evidence in corroboration, the court will not interfere with the justices' adjudication upon it on account of its insufficiency. (*Reg. v. Pearcey*, 16 Jur. 193, Q. B.)

The payment of money by the putative father for the maintenance of the child is corroborative evidence of the paternity. (*Reg. v. Berry*, Bell C. C. 46; 28 L. J. M. C. 86.)

If a woman, who applies for the order before birth, die in childbirth, the order may be made afterwards if her depositions have been taken and corroborative evidence is given. (*R. v. Ravenstone*, 5 T. R. 373; *R. v. Clayton*, 3 East, 58.)

When the summons is taken out more than twelve months from the birth of the child, it will be a necessary part of the applicant's proof that the putative father has within such twelve months paid money for the maintenance of the child; (*R. v. Berry*, Bell C. C. 46; 28 L. J. M. C. 86;) but it is not necessary that the evidence of proof of the payment of money, if given by the mother, should be corroborated. (*Hodges v. Bennet*, 5 H. & N. 625; 29 L. J. M. C. 224.)

The bastard, if competent in other respects, may be examined on oath in corroboration of the mother, as, for instance, to an acknowledgment by the father, when accused, that the witness was his child, or that the witness was constantly reputed to be so, or as to the payment of money for his maintenance, or the like. (*R. v. St. Mary, Nottingham*, 13 East, 57.)

The complainant must show that she resided within the petty sessional division, but an allegation in the summons of her place of residence is evidence upon which the justices may act if a copy of such summons is in evidence. (*Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116.)

4. Proceedings to obtain Bastardy Orders.

Evidence.

Corroboration of mother's evidence.

After twelve months.

Child's testimony.

Residence of complainant.

4. *Proceedings to obtain Bastardy Orders.*

Hearing of the evidence.

Defence.

As to what amounts to a residence, see *Reg. v. Hughes, D. & B.* 188 ; 26 *L. J. M. C.* 133 ; *Reg. v. Myott*, 32 *L. J. M. C.* 138 ; *ante*, p. 410.)

If the defendant appear the evidence must be given in his presence and hearing, unless after his appearance anything occurred to prevent that being done. (*Reg. v. Duke of Grafton and others*, 17 *L. J. M. C.* 125.) But if he appear by counsel or attorney, if the evidence is given in the hearing of the counsel or attorney, it is sufficient. (8 *Vict. c. 10*, s. 7 ; *Reg. v. Shipperbottom*, 10 *Q. B.* 514 ; 16 *L. J. M. C.* 113.)

The putative father may be examined in his own defence. An agreement with the mother for the payment by the defendant of a sum of money to her in respect of and for the future support of the child is not a bar to the application so as to oust the jurisdiction of the justice. (*Follit v. Koetzow*, 2 *E. & E.* 730 ; 29 *L. J. M. C.* 128.) Nor is it the more a bar because she agreed to release him from all further payment in respect of the child. (*Id.*)

If the mother has fixed the time when the connexion took place which resulted in the birth of the child, evidence is admissible on the part of the alleged father to show that another person had connexion with her at or about that time, from which it might be inferred that he was the father of the child. (*Garbutt v. Simpson*, 32 *L. J. M. C.* 186.) But in such a case the mother ought to have been cross-examined as to the latter fact. But though she may be cross-examined as to connexion with other men than the alleged father on occasions which could have no reference to the paternity of the child, her answers must be taken as conclusive, and evidence should not be admitted to contradict her. (*Reg. v. Gibbon, L. & C.* 109 ; 31 *L. J. M. C.* 98.)

The mother may be asked in cross-examination if she has not had connexion with a person other than the defendant at a time which would render it impossible for the connexion to have had anything to do with the paternity of the child, for such a question goes to her credit, though it has no reference to the main issue, but the defendant is bound by her answer and ought not to be allowed to call evidence to contradict her if he desire to do so ; (*Spencely v. De Willott*, 7 *East*, 109 ; *Harris v. Tippet*, 2 *Camp.* 63 ; *Palmer v. Trower*, 8 *Exch.* 247 ; *Attorney-General v. Hitchcock*, 1 *Exch.* 91 ;) though if the justices allow him to call such evidence, the witness who gives it may be convicted, if it be false, of perjury. (*Reg. v. Gibbon, L. & C.* 109 ; 31 *L. J. M. C.* 98.)

Adjournment of hearing.

By 7 & 8 *Vict. c. 101*, s. 4, it is enacted, "that the justices in petty sessions as aforesaid may adjourn the hearing of the case as often as to them may seem fit."

By 8 & 9 *Vict. c. 10*, s. 4, a provision is made for the adjournment of the hearing in the case of a woman who has applied before the birth of a child and has not been delivered or not recovered from her confinement at the time of the petty sessions fixed.

Non-attendance of witnesses.

The non-attendance of witnesses who have been duly summoned is a good ground for an adjournment, and the justice may proceed to compel his or her appearance by issuing his warrant in accordance with the 7 & 8 *Vict. c. 101*, s. 70. (See *ante*, p. 412.)

So the temporary and unintentional absence from his abode of the defendant, and his consequent want of notice of the proceedings, is a good ground for adjournment. (*R. v. Brown*, 1 *L. T. N. S.* 29 ; *ante*, p. 411.)

Judgment.]

If the justices are satisfied with the evidence, they may adjudge the man to be the putative father of the bastard child. If the case is not made out to their satisfaction they may dismiss the application ; but they cannot adjudicate that he is not the father of the child, nor can they order him his costs or anything of the kind, for neither statute provides for such an adjudication. (*Reg. v. Machen*, 14 *Q. B.* 79 ; 18 *L. J. M. C.* 213.)

The order.—By 7 & 8 Vict. c. 101, s. 3, “they may also if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this Act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order : and if the application be made before the birth of the child, or within two calendar months after the birth of the child, at a rate not exceeding five shillings a week for the first six weeks after the birth of such child ; and in other cases such sum shall not exceed two shillings and six pence per week from the time of the making of the application.”

Sect. 4. “No such order shall be made unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child.”

Sect. 5. “All money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison or under sentence of transportation ; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals from time to time appoint some person who, with his own consent, shall have the custody of such bastard child so long as such bastard child is not chargeable to any parish or union. And any two such justices may revoke the appointment of such person, and may appoint another person in his stead ; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovery of all payments becoming due under the order of the court of petty sessions as aforesaid in the same manner as the mother of such bastard child might have done ; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, as hereinbefore provided, shall, as soon as may be, send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk of the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment ; provided always, that no order for the maintenance or support of any such bastard child, made in pursuance of this Act, shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child.”

Sect. 7. “It shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as hereinbefore provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any such bastard child under an order of petty sessions as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices, as penalties and forfeitures ;” under the 3 & 4 Will. IV. c. 76, “provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made becomes chargeable to any parish or union by the neglect of the putative father

4. Proceedings to obtain Bastardy Orders.

The order.
Amount.

Expenses.

When to be applied for.

Money under the order to whom to be paid.

Who may not be appointed to have the custody of child.

Penalty on officers of parishes interfering.

4. *Proceedings to obtain Bastardy Orders.*

On bastard becoming chargeable to parish, parish officers may apply to enforce order.

Orders of justices acting under separate commissions for adjoining counties.

Discretion as to making the order.

Form of the order.

Statutory forms to be valid.

Caption.

to make the payments due under the orders of justices, then and in such case it shall be lawful for the board of guardians of a union or parish, or if there be no such board of guardians, for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person from time to time appointed by the justices as hereinbefore provided, and on condition that such bastard child shall cease to be chargeable to such parish or union."

Sect. 10. "Whereas various unions established" under the authority of the 4 & 5 Will. IV. c. 76 "are situate partly in one county, riding, or division, and partly in an adjoining county, riding, or division; and whereas doubts have been entertained whether any justice of the peace acting under two commissions for different counties, ridings, or divisions, can legally make orders in bastardy when acting in petty sessions within the limits of one of such commissions for such parts of such unions as are situate within the limits of the other of such commissions; and whereas it is expedient to remove all such doubts with regard to orders which have before the passing of this Act been made under such circumstances; be it therefore enacted, that all orders in bastardy which have been made by any justices of the peace acting as such under two commissions for any two adjoining counties, ridings, or divisions, shall, although not made within the county, riding, or division in which the parish interested in the order, or any part thereof, is situate, be as valid, good, and effectual in law to all intents and purposes as if they had been made within such county, riding, or division."

Among the circumstances to which the justices would have regard before making the order would be the ability of the mother to maintain the child, and the fact, if such there be, that the father had already made a sufficient provision for them. (*Smith v. Roche*, 6 C. B. N. S. 223; 28 L. J. C. P. 237.) So also the justices should consider any agreement that might have been made between the putative father and the woman, and the amount of provision made thereby, and whether it had been performed or not. (*Follett v. Koetzow*, 2 E. & E. 730; 29 L. J. M. C. 128.)

The order may, it seems, include more than one bastard child, if begotten by the same father of the same woman. (*R. v. Skin*, 4 Bott. 470.)

Forms of the orders as given in the schedule to the 8 Vict. c. 10 will be found at the end of this article, *post*, p. 424, *et seq.*)

By 8 Vict. c. 10, s. 1, it is enacted, "that where any proceedings have been had or taken before the passing of the Act, or shall hereafter be had or taken, in matters of bastardy," under the provisions of the 7 & 8 Vict. c. 101, "and shall have been set forth according to the forms in the schedule hereunto annexed, or to the like tenor or effect, the same shall be taken respectively to have been and to be valid and sufficient in law; provided that nothing herein contained shall prevent any court of general quarter sessions from proceeding to hear and determine the merits of any case brought before them on appeal against any such order."

The recital of a false fact necessary to give jurisdiction makes the order bad if its falsity appear upon the facts stated in a case sent by the sessions to the Court of Queen's Bench, or on affidavits. (*R. v. Wilson*, 4 Nev. & M. 243.)

The adoption of the statutory forms is not imperative, but it is advisable to use them on all possible occasions, for if another form is used the statement, even of more than need be stated, if incorrect in law or fact, may render the order bad. (*R. v. Browne*, 2 Stra. 811.)

The caption of an order is so far part of it, that it may constitute an averment sufficient to make the order good; as where the caption

stated that the order was made "before us, the Rev. F. S., clerk, and T. P., esquire, her Majesty's justices of the peace for the said riding, and a majority of the justices now present," and the order was simply signed by them, and it was not otherwise stated that they were a majority of those present, the caption was held to be a sufficient statement to that effect. (*Ex parte Boynton*, 1 L. M. & P.)

If the statutory form of order is not followed, all the evidence must appear on the order to have been given on oath. (*R. v. Justices of Bucks*, 14 L. J. M. C. 45; 9 Jur. 305.)

The order must state that it was made at a petty sessions holden for the division, &c., in which the woman resides, and upon a summons issued by and on application made to a justice acting for such division, &c. (*Reg. v. Hickling*, 7 Q. B. 889; *Reg. v. Martin*, 2 Q. B. 1037.) And the petty sessional division must be accurately described; but the holding of the petty sessions and the existence of a petty sessional division must not be confounded. Whenever two justices meet and under their commission transact business within their powers, they then hold a petty sessions, if it be not a quarter or special sessions; but the place where they so meet does not thereby become a petty sessional division, nor by any act or acts of their own can they make it so, if such place be clearly within the ambit and parcel of a division already recognized. (*Reg. v. Whittles*, 13 Q. B. 248; 18 L. J. M. C. 96.)

The order must state the mother's residence to be within the petty sessional division of the justices. (*Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116.)

The statutory form recites that application had been "made to one of her Majesty's justices of the peace acting for this division;" but in an order where the word "in" was used instead of "for," it was held that the jurisdiction of the justices sufficiently appeared. (*Reg. v. Milner*, 14 L. J. M. C. 157.)

The order must show that the application to the petty sessions for the order was within forty days from the service of the summons. (*Reg. v. Rose*, 2 N. S. C. 166; 15 L. J. M. C. 6.) But a statement of the appearance of the defendant on the adjournment of the hearing and a hearing then on the merits will cure the want of an allegation of the service of the summons before the first day of the hearing. (*Ex parte Boynton*, 1 L. M. & P. 12; *R. v. Clayton*, 3 East, 58; *R. v. Clegg*, 1 Stra. 475.)

If the defendant appears, the order must state that the evidence was given in his presence and hearing; and if, after appearance, any special circumstances occurred whereby that averment cannot with truth be made, they should be stated on the face of the order. (*Reg. v. Duke of Grafton & others*, 17 L. J. M. C. 125.) If the defendant appears by attorney, it must be stated that the evidence was given in the presence and hearing of the attorney. (*R. v. Shipperbottom*, 2 N. S. C. 641; 16 L. J. M. C. 113.) And it is absolutely necessary that the evidence should be stated to have been given in the presence of one of the other. (*Reg. v. Duke of Grafton, ubi sup.*) If the defendant does not appear, the note to the statutory form by using the words "as is now proved before us" twice with reference to proof of service of the summons on the defendant six days at least before shows that it is necessary that such fact should be clearly proved, and should therefore be stated. (*Reg. v. Evans*, 19 L. J. M. C. 157.) It need not be stated that the evidence of the woman was given on oath or affirmation as it is not necessarily to be inferred that the blank space left in the statutory form after the words "evidence of such woman" was intended to be so filled up. (*Reg. v. Justices of Cheshire*, 2 N. S. C. 161; 15 L. J. M. C. 3.)

If the defendant tender no evidence, then the words "and having also heard all the evidence tendered by" can be omitted. (*Reg. v. Pearcy*, 17 Q. B. 902; 21 L. J. M. C. 129.)

The order must state that the evidence in corroboration of the mother

4. Proceedings to obtain Bastardy Orders.

Contents of order.

As to petty sessional division.

Residence of mother.

Application after summons.

Appearance.

Evidence.

4. *Proceedings to obtain Bastardy Orders.*

Invalid order.

Divisible order.

As to costs.

Void order.

Amendment.

Costs.

How enforceable by warrant of apprehension.

By distress and sale.

Commitment.

was in some material particular, and if it omit so to do it will be bad. (*Reg. v. Read*, 9 A. & E. 619.)

An order may be invalid in one part, and enforceable as to the residue, if the bad part of the order can be clearly severed from the good. (*Reg. v. Green*, 2 L. M. & P. 130; 20 L. J. M. C. 168; *Reg. v. Maulden*, 8 B. & C. 78; *Reg. v. St. Nicholas, Leicester*, 3 A. & E. 79; *Reg. v. Winstler*, 19 L. J. M. C. 185; *R. v. Wiltshire*, 12 A. & E. 792; 4 P. & D. 406; *R. v. Osley*, 6 Q. B. 256; *Ex parte Colley*, 16 L. T. 419.) Thus where an order was made for the payment of a weekly sum from the birth of the child, where it appeared that the birth was more than two months before the application was made, the order was held good as to the payments payable from the date of the application and was enforced for so much. (*Reg. v. Green*, 20 L. J. M. C. 168; and see *ex parte Harrison*, 16 Jur. 726; 19 L. T. 114.) But if the bad part of the order cannot be clearly severed from the rest, the order is altogether bad; thus, the giving of costs is merely ancillary to the judgment, and therefore where an order is bad as to the judgment, it is not maintainable as to the costs. (*Reg. v. Stoke Bliss*, 6 Q. B. 158; *Reg. v. Green, ubi sup.*) If an order be void for defects appearing on the face of it, it may be treated as no order at all, and the parties be considered in the same situation as if the first justices had declined to make any order at all, or, having drawn up an order, had refused to sign it. (*Reg. v. Brisby*, 1 Den. C. C. 416; 18 L. J. M. C. 157.)

The order may be amended on appeal to the quarter sessions, under the 12 & 13 Vict. c. 45, s. 7, if there were sufficient grounds before the justices to have enabled them to have drawn up the order without the omission. (*Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116.)

The costs of an attorney or counsel may fairly be allowed, as the statutes contemplate their employment.

But the justices cannot, if the application be dismissed, order the putative father his costs or anything of the kind, for neither statute provides for such an adjudication. (See *Reg. v. Machen*, 14 Q. B. 74; 18 L. J. M. C. 213.)

How and when enforceable.—By 7 & 8 Vict. c. 101, s. 3, "If at any time after the expiration of one calendar month from the making of such order as aforesaid, it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant under his hand and seal, cause such putative father to be brought before any two justices; and in case such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may by warrant under their hands and seals direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father; and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security by way of recognizance or otherwise to the satisfaction of such justices for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking such security; but if, upon the return of such warrant, or if, by the admission of such putative father, it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant under their hands and seals cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they may have jurisdiction, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such sum and costs and all

reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied. Provided that, if the woman have allowed the weekly payment to be in arrear for more than thirteen successive weeks without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt; and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks' payment in discharge of the whole arrears or debt.

The 7 & 8 Vict. c. 101, s. 5, provides to whom the money under the order is to be paid. (See *ante*, p. 414.)

And 8 & 9 Vict. c. 10, s. 8, after reciting that doubts had been entertained whether the power of committal given by the 7 & 8 Vict., c. 101, s. 3, existed where it is shown that the putative father has goods and chattels whereon a distress might be levied, but the same are not within the jurisdiction of such justices, it is enacted, "that the said justices are and shall be empowered to commit any such putative father to prison according to the provisions of the said Act, if it appear on the return of such distress-warrant, or on the admission of the putative father that no sufficient distress can be had on any goods or chattels within the jurisdiction of the justices before whom he shall have been brought on such warrant of apprehension."

Application for enforcing such order may be made not only by the mother, but by the person appointed to have the custody of such child under 7 & 8 Vict. c. 101, s. 5; but no officer of any parish or union may conduct any application to enforce any such order, or in any way cause such application to be made, under a penalty of forty shillings; but in case of the death or incapacity of the mother, and the child becoming chargeable, the board of guardians of the union, or, in default of such, the overseers of the poor of the parish or place where the child has become chargeable, may apply. (7 & 8 Vict. c. 101, s. 7, *ante*, p. 414.)

If the application to enforce the order is made by the guardians of an union or overseers of a place, under the 7 & 8 Vict. c. 101, the warrant should show that the child was chargeable to the union or place respectively, (see *R. v. Wilson*, 4 N. & M. 243,) but probably need not state the circumstances under which it became chargeable. (*R. v. Lewis*, 5 A. & E. 881.)

Application by
guardians or
overseers.

If an application be made by the overseers of a township under the 7 & 8 Vict. c. 101, s. 7, it must appear that it was not in a union. (See *Reg. v. Smith*, 7 Q. B. 543; *R. v. Justices of Wiltshire*, 12 A. & E. 793; *R. v. Oxley*, 6 Q. B. 256.)

If the mother desires to abandon an order she has obtained and to have a fresh hearing and fresh order, she must restore the opposite party to the condition in which he would have been if it had not been made. (*Reg. v. Hinchliff*, 10 Q. B. 356.) She must therefore pay the whole costs of the order sought to be abandoned. (*Ib.*)

Abandoning
order.

The justices in petty sessions cannot take notice of a previous order from their own personal knowledge of it. (*Reg. v. Bridgman*, 2 N. S. C. 232; 15 L. J. M. C. 44, see *ante*, p. 412.)

As the statute giving the appeal does not stay execution pending the appeal, and as the recognizance to try the appeal entered into by the putative father only provides for the payment of costs and not for the payment of arrears of maintenance money, if the order be confirmed he is liable to pay according to the order, and a justice has jurisdiction to enforce it by his warrant in the manner hereinbefore mentioned, after the notice of appeal and recognizance, and before the time for hearing of the appeal has run out. And he ought to do so in a case where he thinks that the father never meant *bonâ fide* to try the appeal, and that he only intended to harass the mother, or is preparing to leave the country for the purpose of evading the order, or the

Pending appeal.

4. Proceed-
ings to obtain
Bastardy
Orders.

4. *Proceedings to obtain Bastardy Orders.*

Enforcing order.

like; but he ought not to do so in the vast majority of cases. (*Kendall v. Wilkinson*, 4 E. & B. 680; 24 L. J. M. C. 89.)

The justices have a discretion as to enforcing the order of maintenance, and if in the exercise of discretion, as for instance after examining into the circumstances of the putative father and mother, they determined not to exercise it, the Court of Queen's Bench would not control their discretion by issuing a rule to order them to issue their warrant; but if they do so on a ground which amounts to a declining of jurisdiction, the court will do so. (*Reg. v. Pilkington*, 2 E. & B. 553; see also *Follit v. Koetzow*, ante, p. 415; *Smith v. Roche*, ante, p. 415.)

Mistake.

Where justices made an order on the mother, and at the same sitting afterwards made the order on the father who was told at the time of the latter order, but the order made on the mother was served upon him; and upon his refusal to pay the sum ordered, a correct copy of the order made on him was served upon him, but he again refused to pay on account of the first order delivered to him, he was committed for not paying by a justice, and it was held that the justice was right. (*Wilkins v. Hemsworth*, 7 A. & E. 807, 816; see *R. v. Allen*, 15 East, 346.)

Against soldier.

Now by the Mutiny Act, (28 Vict. c. 11, s. 40), no order for the maintenance of his bastard child can be enforced against a soldier, nor can disobedience to any such order be punished. So that the effect of *Reg. v. Ferrall*, (2 Den. C. C. 51; 20 L. J. M. C. 59), is now destroyed.

By indictment.

The father may be indicted for disobedience to the order, just as in the case of any other legal order of justices. (*Reg. v. Brisby*, 1 Den. C. C. 416; 18 L. J. M. C. 157; *Reg. v. Ferrall*, 2 Den. C. C. 51; 20 L. J. M. C. 39.)

Power of appeal.

Power of appeal.—The putative father, if he is dissatisfied with the decision of the justices either in fact or law, can appeal to the Court of Quarter Sessions; (7 & 8 Vict. c. 101, s. 4;) or if he thinks their decision erroneous only in point of law, he may require them to state and sign a case, under the 20 & 21 Vict. c. 43, for the opinion of one of the superior courts.

To sessions.

To superior court.

Notice of appeal.

To quarter sessions.—By the 7 & 8 Vict. c. 101, s. 4, "If within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security by recognizance or otherwise for the payment of costs to the satisfaction of some one justice of the peace, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty sessions may have been held; and the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit."

Recognizances.

Recorder.

By 8 Vict. c. 10, s. 11, it is enacted, that in the 7 & 8 Vict. c. 101, and in the 8 Vict. c. 10, "The word 'recorder' shall be taken to apply to any person who shall preside as the judge at any court of general quarter sessions held for any city, borough, liberty, or other place of limited jurisdiction."

By the 8 Vict. c. 10, s. 3, it is enacted, "That the condition of such recognizance shall be for the appearance of the said putative father at such general quarter sessions of the peace as is required by the said Act, and his trial of the appeal thereat, and the payment of such costs as he shall be then and there ordered to pay; and that in respect of any order to be made after the passing of this Act, the party entering into any such recognizance shall forthwith give or send a notice in writing

of his having so entered into such recognizance to the woman in whose favour the said order shall have been made; and unless he shall enter into the recognizance before one of the justices who shall have made the order, to one at least of such justices, and in default of his giving or sending such notice or notices as aforesaid, the appeal shall not be allowed; provided that the sending of such notice or notices by the post shall be taken to be sufficient."

4. *Proceedings to obtain Bastardy Orders.*

Notice of appeal.—The notice may be verbal, and need not be in writing. (*Reg. v. Justices of Huntingdonshire*, 4 N. S. C. 101; 19 L. J. M. C. 12; *Reg. v. Justices of Surrey*, 5 B. & A. 539; *Reg. v. Justices of Salop*, 4 B. & A. 626.) It must be given within twenty-four hours after the adjudication and making of the order; and the order is deemed to be made the moment the justices have orally pronounced their decision in court. (*Ex parte Johnson*, 3 B. & S. 947; 32 L. J. M. C. 193; overruling *R. v. Justices of Flintshire*, 2 N. S. C. 236; 15 L. J. M. C. 50.) The time of appealing, therefore, runs from the time of pronouncing the order and not after service or notice of the order. (*Ex parte Johnson*, *ubi sup.*; *Reg. v. Justices of Derbyshire*, 7 Q. B. 193; 1 N. S. C. 645; 14 L. J. M. C. 84; *Reg. v. Justices of Huntingdonshire*, 19 M. C. L. J. 127.) The signatures to the order must be taken to be affixed *nunc pro tunc*. The notice must be given within twenty-four hours after the adjudication and making of the order, and would be bad if made after that period of time has elapsed, although it be given during the day following the making of the order. But Sunday is excluded in this computation of time, and, therefore, where the order was made at five o'clock on Saturday, and the notice of appeal was not given until the following Monday morning, it was held to be in time. (*Reg. v. The Justices of Middlesex*, 3 N. S. C. 152; 17 L. J. M. C. 111.)

Verbal notice sufficient.

When to be given.

Within twenty-four hours.

Sunday excluded.

If the defendant gives notice of appeal within twenty-four hours after the making of the order in fact it is immaterial that the order bears an earlier date, and evidence is admissible to show when the order was in truth made, notwithstanding the date. (*Reg. v. The Justices of Flintshire*, 2 N. S. C. 236; 15 L. J. M. C. 50, overruled as to the time of the order being made.)

It is not necessary, if the notice of appeal be a written one, that it should be served personally, but it will be sufficient if left at the woman's dwelling-house under circumstances that it can reasonably be presumed to have come to her hands. (*Reg. v. Nunn*, 1 N. S. C. 19; *Reg. v. Justices of North Riding of Yorkshire*, 7 Q. B. 154; 14 L. J. M. C. 91; *Reg. v. Justices of Huntingdonshire*, *ubi sup.*)

Service of notice.

No grounds of appeal need be stated. (*Reg. v. Justices of Derbyshire*, 1 N. S. C. 411.)

Grounds of appeal unnecessary.

No practice of sessions can dispense with the requirements of a statute as to preliminaries to an appeal. (*Reg. v. Justices of Lincolnshire*, 3 B. & C. 548.)

The notice of appeal must be proved if given orally by the appellant, or some who heard it given, or by the woman herself, as she is made a competent witness on the "trial" of an appeal, and this proof is part of the trial. (*Reg. v. Justices of Middlesex*, 17 L. J. M. C. 111.)

By the 8 Vict. c. 10, s. 6, it is enacted "that on the trial of any such appeal before any court of quarter sessions the justices therein assembled, or the recorder, (as the case may be,) shall hear the evidence of the said mother, and such of her evidence as she may produce, and any evidence tendered on behalf of the appellant, and proceed to hear and determine the said appeal in other respects according to law, but shall not confirm the order so appealed against, unless the evidence of the said mother shall have been corroborated in some material particular by other testimony to the satisfaction of the said justices in quarter sessions assembled, or the said recorder." The mother's Evidence is

Evidence of the mother on appeal.

4. *Proceedings to obtain Bastardy Orders.*

also now admissible under 14 & 15 Vict. c. 99, s. 2, tit. "*Evidence*," Vol. II.

The recognizance and notice of recognizance must also be proved, but it is sufficient as to the latter that it was sent by the post. (8 Vict. c. 10, s. 3, *ante*, p. 420.)

The latter part of the above 6th section does not apply when the appellant withdraws from his case, and it is not tried out, and therefore the court is justified in confirming an order under such circumstances without hearing the evidence of the woman or the corroborative evidence in a material particular. (*Reg. v. Justices of Bucks*, 3 N. S. C. 620; 18 L. J. M. C. 113.)

Notice of recognizance.

Service of Notice of Recognizance to Mother.—Service may be made by the attorney of the appellant. The sending of such notice by post is a sufficient service. (8 Vict. c. 10, s. 3, *ante*, p. 420.)

The party entering into the recognizance to appeal, must forthwith give notice of his having done so to the mother of the child, and that means with as little delay as the circumstances will reasonably admit of, and an interval of seventeen days consumed in attempting to serve the mother personally, which was not necessary to be done, is too great. (*Ex parte Lowe*, 3 D. & L. 737; see *Reg. v. Justices of Cheshire*, 11 Jur. 170.)

If due service of the notice of recognizance is admitted by the woman or her attorney, it is evidence of service in due time, upon which the sessions may act and hear the appeal, whatever the lapse of time may have been. (*Reg. v. Justices of Gloucestershire*, 1 B. C. Cas. 29; 16 L. J. M. C. 57.)

Notice dispensed with, when.

Where due notice of the recognizance was sent by post, addressed to the mother at her place of residence, but the mother was in fact dead at the time of the sending, the appellant was held excused by the act of God from giving notice of appeal, and the sessions were ordered to hear the appeal. (*Reg. v. Justices of Leicestershire*, 4 N. S. Cas. 124; 15 Q. B. 88; 19 L. J. M. C. 209.)

Contents.

The notice of recognizance need not state that the recognizance has the several conditions required by the statute. (*Reg. v. Holborow*, 14 Q. B. 421.) It is sufficient if the notice, reasonably construed, give sufficient information. (*R. v. Leeds Rec.*, 1 B. C. Cas. 50; 21 L. J. M. C. 171.)

If notice of recognizance is not duly given, the appeal is not to be allowed, and the sessions cannot confirm the order; (*Reg. v. Holborow*, 14 L. J. Q. B. 421;) but the justice is not the proper person to decide on the validity of the notice of appeal, and therefore he must take the recognizance of the appellant to appeal, whether due notice of appeal has in his opinion been given or not to the woman. (*Re Carter*, 24 L. J. M. C. 72.)

Form of order of quarter sessions.

The order of quarter sessions must state the existence of the circumstances and the performance of the conditions necessary to give jurisdiction, and therefore it must show due notice of appeal, and due entering into recognizances, under 7 & 8 Vict. c. 101, s. 4, and sending notice of recognizance under 8 & 9 Vict. c. 10, s. 3. (*Reg. v. Justices of Hampshire*, 9 Dowl. P. C. 171.)

Costs of Appeal.—If the case has been called on, but on a preliminary objection for a defect in the notice, or such like, it is dismissed, costs may be given under the 7 & 8 Vict. c. 101, s. 4. (*R. v. Exeter Rec.*, 5 Q. B. 342.) So the entry of an appeal, and the calling on of the case, and dismissal of the case, for the non-appearance of one of the parties, would justify the court in giving costs. (See *Reg. v. Stamper*, 1 Q. B. 119.)

But it would seem that there is no power to give costs if the appeal be

not allowed by reason of no notice of recognizance being duly given' (*Reg. v. Holborow*, 14 Q. B. 421.)

The quarter sessions may reserve any question of law arising on the trial of the appeal for the decision of the Court of Queen's Bench.

Inasmuch as the 7 & 8 Vict. c. 101, requires the evidence of the mother to be corroborated to the satisfaction of the justices, it cannot be reserved for the Court of Queen's Bench to say whether evidence offered on the trial of the appeal was sufficient to justify them in confirming the order, (*Reg. v. Percy*, 17 Q. B. 193; 21 L. J. M. C.), though the Court of Queen's Bench may be asked whether the evidence was admissible or not.

Abandonment of Appeal.—By the 8 Vict. c. 10, s. 5, it is enacted that "if at any time before the hearing of the appeal the putative father, who shall have entered into his recognizance for the trial of the appeal and the payment of costs, shall give notice, in writing, of his abandonment of the appeal to the mother of the child, in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order, and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated nor in any manner put in force or otherwise proceeded with."

4. *Proceedings to obtain Bastardy Orders.*

Abandonment of appeal.

Certiorari.—The order may be removed by the defendant, either before or after appeal, to the quarter sessions into the Court of Queen's Bench by writ of *certiorari*, for the purpose of quashing it.

Order may be removed by *certiorari*.

The court will decide upon its validity or invalidity by the matters appearing on the face of the order, unless, indeed, the objection be that the justices who made it had no jurisdiction, and that fact only appears on affidavit, for then the court will look to the affidavits. (*Reg. v. Bolton*, 1 Q. B. 66.)

They will quash the order if it appear that the justices making it had not sufficient jurisdiction so to do; (*R. v. Tenant*, 2 Stra. 716;) or if the reasons for the adjudication be given and they are not sufficient; (*R. v. Browne*, 2 Stra. 811;) or for a defect in the service of the summons, when the order has been made without the defendant's appearance; (*Reg. v. Evans*, 19 L. J. M. C. 151; *Reg. v. Higham*, 7 E. & B. 557; 26 L. J. M. C. 116;) but if the proceedings are regular upon the face of them to induce the court to set aside such proceedings, on the ground of defective service of summons, and the absence in consequence of the defendant at the hearing, the affidavits must show that the defendant was not the father of the child, so as to make out that an unjust charge has been attempted to be fastened on him by reason of his absence. (*Reg. v. Davis*, 1 B. C. Cas. 191; 22 L. J. M. C. 143.) And the order will be quashed if the service of the summons was beyond the limits of England and Wales. (*Reg. v. Lightfoot*, 6 E. & B. 822; 25 L. J. M. C. 115.)

Quashing for want of jurisdiction.

The court will quash an order on *certiorari* which, after reciting that the putative father had been summoned and had appeared, should omit to state that the proof was made in his presence and hearing; (*Reg. v. Duke of Grafton*, 17 L. J. M. C. 125;) but it is sufficient if the evidence was stated to have been given in the presence and hearing of the attorney attending on behalf of the father. (*Reg. v. Shipperbottom*, 16 L. J. M. C. 113, see *ante*, p. 417.) It is sufficient, under the 8 Vict. c. 10, if the order recites that the justice to whom the application was made usually acted "in" the division without saying "for" the division. (*Ante*, p. 417.)

Defects in form.

The order need not state the evidence to have been on oath, (*Reg. v. Justices of Cheshire*, 16 L. J. M. C. 3,) but it must show that it was

4. *Proceedings to obtain Bastardy Orders.*

Amendment.

applied for with due time (Reg. v. Rose, 2 N. S. C. 166; 15 L. J. M. C. 6.)

The order on *certiorari* may be quashed as to part, and supported as to the rest. (See *R. v. Green*, 2 L. M. & P. 130; 20 L. J. M. C. 168, and *ante*, p. 418. See on form of order, *ex parte Boynton*, 1 L. M. & P. 12.)

The order may be amended for a defect in form by the court, on the argument of the *certiorari* under the 12 & 13 Vict. c. 45, s. 7; see *ante*, tit. "*Amendment*," pp. 169, 170.

Mandamus.]—If the justices refuse improperly to hear the application, the Court of Queen's Bench will compel them by writ of *mandamus* to hear the evidence and adjudicate upon it. (*Jones v. Machen*, 3 N. S. C. 629; *Ex parte Westerman*, 16 L. J. 420; *Reg. v. Brisbey*, 2 C. & K. 962; 18 L. J. M. C. 157.)

The justices cannot refuse to hear a second application, because they have inquired into the matter before and dismissed the complaint, whether the dismissal was in the nature of a nonsuit, or a hearing on the merits, since they thereby decline jurisdiction. See *ante*, p. 412.

A *mandamus* to hear an appeal must be applied for promptly, but where an option was given at the January sessions to an appellant either to take a case or issue a *mandamus*, an application for a *mandamus* was held not to be too late, though made in Easter Term. (*Reg. v. Justices of Cheshire*, 15 L. J. M. C. 114.)

V. Forms.

(1.) Form of application by a woman with child. (8 Vict. c. 10, Sched. No. 1.)

Application and deposition of a single woman residing at to wit, } in the county, [or "city, borough, or other place, as the case may be,"] of taken upon oath before me the undersigned, one of her Majesty's justices of the peace, acting for the petty sessional division of in the said county of [or "city, borough, or other place,"] in which she resides, this day of A.D. 186 , who upon her oath, [or "affirmation"], saith that she is now with child, and that of , in the county of , is the father of the child with which she is now pregnant, and maketh application for a summons to be served upon the said , so alleged by her to be the father of the said child, to appear at a petty sessions to be holden after the birth of such child for the petty sessional division, [or "city, borough, or other place,"] of , in which I usually act to answer such complaint, as she shall there and then make touching the premises.

Exhibited and sworn before me the day and year first above written.

J. S.

(2.) Form of summons on application by woman with child. (8 Vict. c. 10, Sched. No. 2.)

To , of the parish of , in the county of } Whereas an application hath been made to me, the undersigned, one of to wit, } her Majesty's justices of the peace for the county [or "city, borough, or other place,"] of , by single woman, residing at in the petty sessional division of the said county, [or "city, borough, or other place,"] for which I act, now with child, of which child she hath this day duly sworn on oath, [or "affirmed,"] before the said justice, that you are the father, for a summons to be served on you to appear at a petty sessions, according to the form of the statute in such case made and provided: These are therefore to require you to appear at the petty session of the justices, holden at , being the petty sessions for the division, [or "city, borough, or other place"] of in which I usually act, on , [insert some day when the petty session will be held after the birth of the child, and at such a distance of time that six days at least may elapse after the issuing of the summons, and the service on the man, or at his place of abode, before the petty session,] the day of , at A. D. to answer any complaint which she shall then and there make against you, touching the premises.

Herein fail you not.
Given under my hand at
borough, or other place," of

, in the county of
this day of

, [or "city,
A. D.
J. S.

5. Forms.

Note.—If you neglect to appear at the petty sessions, as above stated, the justices upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, at the petty sessions therein named, to make an order upon you, as the putative father of the child, above referred to, to pay a weekly sum to the said mother, for its maintenance, and other sums for costs and expenses.

The information and application of , single woman, residing
to wit. } at , in the county of , before me, the undersigned,
one of her Majesty's justices of the peace, acting for the petty sessional division
of , in the said county of , [or "city, borough, or other place,
as the case may be,"] in which she resides, this day of
in the year of our Lord, one thousand eight hundred and sixty , who
saith that she hath been delivered of a bastard child, since the passing of the Act
of the eighth year of the reign of her present Majesty, intituled, "An Act for the
further amendment of the Laws relating to the poor in England," and within
twelve months before this day, to wit, on the day of , in the
year of our Lord, one thousand eight hundred and sixty , and alleges
that one , of , in the county of , is the father of
such child, and maketh application to me for a summons to be served upon the said
to appear at a petty session to be holden for the petty sessional division
[or "city, borough, or other place,"] in which I usually act, to answer such com-
plaint, as she shall then and there make, touching the premises.
Exhibited before me, the day and year first above written.

J. S.

(3.) Application
for a summons
by a woman
after birth.
(8 Vict. c. 10,
Sched. No. 3.)

To , of the parish of , in the county of
to wit. } Whereas application hath been this day made to me, the undersigned,
one of her Majesty's justices of the peace, for the county of , ["city,
borough, or other place,"] by , single woman, residing at , in
the petty sessional division of the said county, ["city, borough, or other place,"] for
which I act, who hath been delivered of a bastard child, since the passing of the
Act of the eighth year of the reign of her present Majesty, intituled, "An Act for
the further amendment of the laws relating to the poor in England," within twelve
calendar months from the date hereof, and of which bastard child she alleges you
to be the father, for a summons to be served upon you to appear at the petty sessions
of the peace, according to the form of the statute in such case made and provided.
These are therefore to require you to appear at the petty session of the justices,
holden at , being the petty session for the division, ["city, borough, or
place,"] in which I usually act, on the day of , [insert a day,
"after the expiration of six days at least," from the date of the summons, or
the day when the same can be served upon the putative father, or at his last
place of abode, if he have one,] at o'clock, in the noon, A. D. 186 ,
to answer any complaint which she shall then and there make against you, touching
the premises.

(4.) Summons
where the
application is
made by a
woman after
birth. (8 Vict.
c. 10, Sched.
No. 4.)

Herein fail you not.
Given under my hand at
of this day of

, in the county, ["city, borough, or place,"]
A. D. 186 .

J. S.

Note.—If you neglect to appear at the petty sessions as above stated, the justices upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed if they think fit to make an order upon you as the putative father of the child above referred to, to pay a weekly sum to the said mother, for its maintenance, and other sums for costs and expenses.

5. Forms.

(5.) Application for a summons by a woman after birth where the alleged father has paid money within twelve months after the birth. (8 Vict. c. 10, Sched. 6.)

The information and application of , single woman, residing to wit, } at in the county of , before me, the undersigned, one of her Majesty's justices of the peace, acting for the petty sessional division of , in the said county of [or "city, borough, or other place," as the case may be] in which she resides, this day of A.D. 186 , who saith that she hath been delivered of a bastard child more than twelve calendar months before this day, to wit, on the day of A.D. 186 , and alleges that one , of in the county of , is the father of such child, and having given proof to me that the said did, within twelve calendar months next after the birth of such child pay money for its maintenance, maketh application to me for a summons, to be served upon the said , to appear at a petty sessions to be holden for the petty sessional division [or "city, borough, or other place," as the case may be] in which I usually act, to answer such complaint as she shall then and there make touching the premises.

Exhibited before me, the day and year first above written.

J. S.

(6.) Summons when the application is made by a woman after birth where the alleged father has paid money within twelve months after the birth. (8 Vict. c. 10, Sched. 6.)

To , of the parish of , in the county of to wit, } Whereas application hath been this day made to me, the undersigned, one of her Majesty's justices of the peace for the county of [or "city, borough, or other place," as the case may be] by , single woman, residing at , in the petty sessional division of the said county [or "city or borough," as the case may be] for which I act, who hath been delivered of a bastard child more than twelve calendar months before this day, of which bastard child she alleges you to be the father, and for the maintenance whereof she hath given me proof that you did within the twelve calendar months next after its birth, pay money, for a summons to be served upon you to appear at a petty sessions of the peace according to the form of the statute in such case made and provided.

These are therefore to require you to appear at the petty sessions of the justices holden at , being the petty session for the division [or "city, borough or other place as the case may be,"] in which I usually act, on the day of , [insert some day at least six days after the date of the summons, and after the same can be served upon the man, or at his place of abode] at o'clock in the noon, A. D. 186 , to answer any complaint which she shall then and there make against you touching the premises.

Herein fail you not.

Given under my hand at , in the county [or "city, borough or other place, as the case may be,"] of , this day of , A. D. 186 .

J. S.

Note.—If you neglect to appear at the petty sessions as above stated, the justices upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed if they think fit, to make an order upon you as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.

(7.) Form of order when application was made by a woman with child. (8 Vict. c. 10, Sched. 7.)

At a petty session of her Majesty's justices of the peace for the county, to wit, } [or "city, borough, or other place, as the case may be,"] of , holden in and for the , [or "city, borough, or other place, as the case may be,"] division of , in the said county, [or "city, borough, or other place, as the case may be,"] at , on the day of , in the year of our Lord one thousand eight hundred and , before us , her Majesty's justices of the peace for the said county, [or "city, borough, or other place," as the case may be.]

Whereas one , single woman, residing at , within this division, [or "city, borough, or other place," as the case may be,] being with child did on the day of , in the year of our Lord one thousand eight hundred and , make application to , one of her Majesty's justices of the peace acting for this division, [or "city, borough, or other place," as the case may be,] for a summons to be served upon one , of the parish of , in the county, [or "city, borough, or other place," as the

case may be,] of _____, whom she, being duly sworn before the said _____ upon her oath stated [or "affirmed,"] to be the father of the child with which she was then pregnant; and the said justice thereupon issued his summons to the said _____, to appear at a petty session to be holden on this day for this division [or "city, borough, or other place," as the case may be,] in which the said justice usually acts, to answer her complaint touching the premises: And whereas the said _____, hath been lately delivered of a bastard child: And whereas the said _____, having been duly served with the said summons, and appearing in pursuance thereof [insert here, if the defendant do not appear, "six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode, six days at least before this day, as is now proved before us," and erase the words in roman,] _____; and the said _____, having now applied to us, the justices in petty sessions assembled, for an order upon the said _____, according to the form of the statute in such case made and provided; and it being now proved to us in the presence and hearing of the said [should the defendant not appear, erase the words in roman,] _____ that the said child was, since the passing of an "Act passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further amendment of the laws relating to the poor in England," that is to say, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, born a bastard of the body of the said _____; and we having, in the presence and hearing of the said [should the defendant not appear erase the words in roman] _____, heard the evidence of such woman _____ and such other evidence as she hath produced, and having also heard all the evidence tendered by [should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself, or by attorney or counsel, then erase the words in roman,] _____, the said _____, and the evidence of the said _____, the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge the said _____, to be the putative father of the said bastard child; and having regard to all the circumstances of the case, we do now hereby order, that the said _____, do pay unto the said _____, the mother of the said bastard child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such child, under the provisions of the said statute, the sum of [not to exceed five shillings. If the justices decline to allow the payment from the birth, of any sum, erase the words in roman, and before the word "until," insert the time from which payment is to be made, according to their judgment] per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of _____, [not to exceed two shillings and sixpence] per week _____, until the said child shall attain the age of thirteen years, or shall die, or the said _____, shall marry: And we do hereby further order the said _____, to pay to the said _____, the sum of _____, being the costs incurred in obtaining this order [if the justices should decide upon allowing such expenses, insert here, "and the sum of ten shillings for the midwife."]

Given under our hands and seals, at the sessions aforesaid.

J. S. (L. S.)

G. R. (L. S.)

_____, } At a petty session of her Majesty's justices of the peace for the county, to wit, } [or "city, borough, or other place," as the case may be,] of _____ holden in and for the division, [or "city, borough, or other place," as the case may be,] of _____, in the said county, [or "city, borough, or other place," as the case may be,] at _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, before us _____, her Majesty's justices of the peace for the said county, [or "city, borough, or other place," as the case may be.]

(8.) Form of order when application was made by a woman after birth. (8 Vict. c. 10, Sched. 8.)

Whereas one _____, single woman, residing at _____, within this division, [or "city, borough, or other place," as the case may be,] _____ did, on the _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____, having been delivered of a bastard child within twelve calendar months prior thereto, make application to _____, one of her Majesty's justices of the peace acting for this division, [or, "city, borough, or other place," as the case may be,] for a summons to be served

5. Forms.

upon one _____, of _____, whom she alleged to be the father of the said child [when the application is made after the expiration of twelve months from the birth, but the alleged father has paid money for the maintenance of the child, for the word "within" substitute the words "more than"; and after the word "child" insert "and who was proved before the said justice to have paid money for the maintenance of the said child within twelve calendar months after its birth,"] and the said justice thereupon issued his summons to the said _____, to appear at a petty session to be holden on this day for this division [or "city, borough or other place," as the case may be,] in which the said justice usually acts, to answer her complaint touching the premises:

And whereas the said _____, having been duly served with the said summons within forty days from this day [if the order be made at an adjourned session, insert the day of the commencement of the session, adding these words, "from which day the hearing of this case hath been adjourned," and erase the words "this day,"] [if the defendant do not appear, insert here, "and six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words which follow in roman] and now appearing in pursuance thereof] _____, and the said _____, having now applied to us the justices in petty sessions assembled, for an order upon the said _____, according to the form of the statute in such case made and provided; and it being now proved to us, in the presence and hearing of the said [should the defendant not appear, erase the words in roman] _____ that the child was, since [or "within six calendar months before"] the passing of an Act passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further amendment of the laws relating to the poor in England," (that is to say) on the _____ day of _____ in the year of our Lord one thousand eight hundred and forty _____, born a bastard of the body of the said _____; and we having in the presence and hearing of the said _____, [should the defendant not appear erase the words in roman.] heard the evidence of such woman _____, and such other evidence as she hath produced, and having also heard all the evidence tendered by [should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself, or by attorney or counsel, then erase the words in roman.] _____ the said _____, and the evidence of the said _____, the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge the said _____, to be the putative father of the said bastard child; and, having regard to all the circumstances of this case, we do now hereby order, that the said _____, do pay unto the said _____, the mother of the said bastard child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such bastard child under the provisions of the said statute the sum of _____, [not to exceed five shillings. This larger amount for the six weeks cannot be allowed, unless the application has been made within two calendar months after the birth. If the application has not been made within this time, or the justices do not think it right to allow that or any less sum from the birth, erase the words in roman and proceed thus: "_____ per week from the said _____ day of _____ last, being the day upon which such application was made to the said justice as aforesaid"] _____ per week, for the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of _____ per week, _____, until the said child shall attain the age of thirteen years, or shall die, or the said _____, shall marry: And we do hereby further order the said _____, to pay to the said _____, the sum of _____, being the costs incurred in obtaining this order [if the justices should decide in allowing such expenses, insert here, "and the sum of ten shillings for the midwife"].

Given under our hands and seals, at the sessions aforesaid.

J. S. (L. S.)
G. R. (L. S.)

{9.) Common
form of recog-
nizance, with the
following

Whereas by an order under the hands and seals of _____, to wit. _____ assembled at a petty sessions of her Majesty's justices of the peace for the county of _____, [or "city, borough, or other place,"] holden in and for the

division of , [or "city, borough, or other place,"] in the said county, at , on , the day of , in the year of our Lord one thousand eight hundred and forty the said was adjudged to be the putative father of a bastard child, of which one had been then lately delivered, and was ordered to pay to her certain sums of money therein set forth: And whereas the said , hath given to the said notice of his intention to appeal against the said order to the general quarter sessions of the peace to be holden on , [if the notice of appeal do not set out the day on which the quarter sessions is to be holden, this recital and the condition must be altered accordingly] the day of , next for the county of

5. Forms.

condition.
(8 Vict. c. 10,
Sched. 9.)

Now the condition of this recognizance is such, that if the above named , do appear at the general quarter sessions of the peace to be held at , in and for the county of , [or "city, borough, or other place,"] on the day of , in the year of our Lord one thousand eight hundred and , and then and there try such appeal, and pay such costs as shall be by the said court awarded, then this recognizance to be void.

Taken and acknowledged this day of , in the year of our Lord one thousand eight hundred and , at , in the county of , [or "city, borough, or other place,"] before me, the undersigned, one of her Majesty's justices of the peace for the said county [or "city, borough, or other place,"]

, } The information and complaint of of the parish of to wit, } in the county [or "city, borough, or other place,"] of single woman taken upon oath, [or "affirmation,"] before me one of Her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] the [this must not be before the expiration of one calendar month from the order] day of in the year of our Lord one thousand eight hundred and who saith, that by an order made under the authority of the statute passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further Amendment of the Laws relating to the Poor in England," at the petty sessions holden in and for the division of [or "city, borough, or other place,"] in the county of [or "city, borough, or other place,"] on the day of in the year of our Lord one thousand eight hundred and by her Majesty's justices of the peace in and for the said county [or "city, borough, or other place,"] acting for the said division [or "city, borough, or other place,"] then and there assembled, of in the county of was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said should pay to her the said so long as she should live or should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of such bastard child, under the provisions of the said statute, the sum of per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks, [if the sum for the first six weeks should not have been ordered, erase the words in roman,] the sum of per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry, and the sum of ten shillings for the midwife, and the sum of for the costs incurred in obtaining such order.

(10.) Information of the mother on disobedience to the order.
(8 Vict. c. 10,
Sched. 10.)

And this deponent further saith, that the said hath had due notice of the said order, and that the said bastard child is now living under the age of thirteen years, and that she the said deponent hath not been married since the said order was made, and that the payments directed to be made by the said order have not been made according thereto by the said , and that there is now in arrear for the same the sum of , being the amount of arrears for weeks' payments, and ten shillings for the midwife, and the sum of for the costs incurred in the obtaining such order; and this informant therefore prays justice in the premises.

Exhibited and sworn before me, the day and year first above written, at , in the county [or "city, borough, or other place,"]

J. S.

5. Forms.

(11.) Warrant of apprehension for disobedience of order. (8 Vict. c. 10, Sched. 11.)

To the constable of _____, in the county [or "city, borough, or other place"] of _____, and all her Majesty's officers of the peace in and for the said county [or "city, borough, or other place"] whom these may concern. Whereas information and complaint have been made upon oath [or "affirmation"] before me, one of her Majesty's justices of the peace for the county [or "city, borough, or other place"] of _____, the _____ day of _____, in the year of our Lord, one thousand eight hundred and _____, by _____, of the parish of _____, in the county [or "city, borough, or other place"] of _____, single woman, that by an order made under the authority of the statute passed in the eighth year of the reign of her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," at the petty sessions holden in and for the division [or "city, borough, or other place"] of _____, in the county [or "city, borough, or other place"] of _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by her Majesty's justices of the peace in and for the said county [or "city, borough, or other place"] acting in and for the said division [or "city, borough, or other place"] then and there assembled _____, of _____, in the county of _____, was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said _____ should pay to her the said _____ so long as she should live and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child, under the provisions of the said statute, the sum of _____, per week from the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of _____ per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry, and the sum of ten shillings for the midwife, and the sum of _____ for the costs incurred in obtaining such order; and that the said _____ had had due notice of the said order, and that the said bastard child is now living under the age of thirteen years, and that she the said mother hath not been married since the said order was made, and that the payments directed to be made by the said order have not been made according thereto by the said _____, and that there is now in arrear for the same the sum of _____, being the amount of arrears for _____ weeks' payments, and ten shillings for the midwife, and the sum of _____ for the costs incurred in the obtaining such order.

These are, therefore, in her Majesty's name, to command you, the said constable, or other officers of the peace, or some or one of you, forthwith to apprehend the said _____, and convey him before two of her Majesty's justices of the peace, in and for the said county [or "city, borough, or other place"] to answer the premises, and be dealt with according to law.

Given under my hand and seal, at _____, in the county of _____, [or "city, borough, or other place,"] this _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____.

J. S. (L. S.)

(12.) Warrant of distress against the putative father. (8 Vict. c. 10, Sched. 12.)

To the constable of _____, in the county of _____, to wit. } Whereas information and complaint were, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, made upon oath [or "affirmation,"] before _____, one of her Majesty's justices of the peace in and for the said county [or "city, borough, or other place,"] by _____, of the parish of _____, in the county of _____, [or "city, borough, or other place,"] single woman, that by an order made at the petty sessions holden in and for the said county [or "city, borough, or other place,"] of _____, in the county of _____, [or "city, borough, or other place,"] on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by her Majesty's justices of the peace in and for the said county [or "city, borough, or other place,"] acting in and for the said division, [or "city, borough, or other place,"] then and there assembled _____, of _____, in the county [or "city, borough, or other place,"] of _____, was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said _____ should pay to her the said _____, so long as she should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of the said child under the pro-

visions of the said statute, the sum of _____ per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks, the sum of _____ per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry, and the sum of ten shillings for the midwife, and the sum of _____ for the costs incurred in obtaining such order; and that the said _____, had had due notice of the said order, and that the said bastard child was then living under the age of thirteen years, and that she the said mother had not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said _____, and that there was then in arrear for the same the sum of _____, being the amount of arrears for _____ weeks' payments, and ten shillings for the midwife, and the sum of _____ for costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and seal directed to the constable of the said parish of _____, and all her Majesty's officers of the peace in and for the said county [or "city, borough, or other place,"] commanded him, or some or one of them, forthwith to apprehend the said _____, and to convey him before two of her Majesty's justices of the peace for the said county [or "city, borough, or other place,"] to answer the premises, and be dealt with according to law. Whereupon the said _____, being now brought before us, two of her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] to shew cause why the same should not be paid, hath not shewn any cause why the same should not be paid; and the same duly appearing to us upon oath to be due from the said _____, under the said order, together with the further sum of _____ for the costs attending such warrant, apprehension, and bringing up of him the said _____, nevertheless neglects [or "refuses"] to make payment of the said sums due under the said order, and the said sums so due for such costs.

These are therefore to require you forthwith to make distress of the goods and chattels of the said _____, and if within the space of _____ days next after such distress by you taken, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale thereof that you detain the said sums, and also the reasonable charges of taking, keeping, and selling the said distress, rendering the overplus (if any), on demand, unto the said _____, and if no sufficient distress can be found, that then you certify the same unto us, or unto [if the party give security for his appearance, insert the names of the justices before whom he is to appear, but should he not find such security, insert the word "any"] two of her Majesty's justices of the peace acting for the said county [or "city, borough, or other place,"] to the end that such further proceedings may be had therein as to law doth appertain: And we further order you to make return to this warrant, on the _____ day of _____ next, unto us or such justices as aforesaid.

And whereas [should the party find security for his appearance on the return of the warrant, erase this paragraph] the said _____, not having given sufficient security, by way of recognizance or otherwise, to our satisfaction, for his appearance on the return of this warrant, we do hereby further order you to detain the said _____, and keep him in safe custody until the said return can be conveniently made, and then bring him before us or such justices as aforesaid.

Given under our hands and seals, at _____, in the county [or "city, borough, or other place"] of _____, this _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____

J. S. (L. S.)

G. R. (L. S.)

Recognizance in the common form, subject to the following condition.

Whereas the above-bounden _____, having been apprehended upon a to wit, } warrant issued under the hand and seal of _____, one of her Majesty's justices of the peace in and for the county [or "city, borough, or other place,"] of _____, upon the information and complaint of _____, for disobedience to an order made in the petty sessions holden in and for the division [or "city, borough, or other place,"] of _____, in the county of _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by her Majesty's justices of the peace then and there assembled, whereby he was adjudged to be the putative father of a bastard child,

5. Forms.

(13.) Form of recognizance for appearance at the return of the distress warrant. (8 Vict. c. 10, Sched. 13.)

5. Forms.

lately born of the body of the said , single woman, and ordered to pay certain sums of money as therein set forth; and having been brought before , two of her Majesty's justices of the peace for the said county [or "city, borough, or other place,"] by virtue of the said warrant, and having neglected [or "refused"] to make payment of the sums due from him under such order, together with the costs attending such warrant, apprehension, and bringing of him up before such justices, they have, by warrant under their hands and seals, addressed to the constable of the parish of , directed the sum so due, together with such costs, to be recovered by distress and sale of the goods and chattels of the said , and have made the said warrant returnable on the day of , to them or unto , two justices of the peace acting for the said county [or "city, borough, or other place"].

Now the condition of this recognizance is such, that if the above-bounden , do appear before the justices unto whom the said warrant is made returnable on the day so appointed for the return thereof, to abide the further proceedings thereon, then the same shall be of no effect, otherwise to remain in full force.

Taken and acknowledged the day of , in the year of our Lord one thousand eight hundred and forty , at , in the county [or "city, borough, or other place,"] of , before me the undersigned, one of her Majesty's justices of the peace in and for the said county [or "city, borough, or other place,"] of .

J. S.

(14.) Warrant of commitment.
(8 Vict. c. 10,
Sched. 14.)

To the constable of , in the county, [or "city, borough, or other place,"] of , and to the keeper of the common gaol, [or "house of correction,"] at , in the county of

Whereas information and complaint were, on the day of , in the year of our Lord one thousand eight hundred and , made upon oath, [or "affirmation,"] before , one of her Majesty's justices of the peace, for the said county, [or "city, borough, or other place,"] by of the parish of , in the county, [or "city, borough, or other place,"] of , single woman, that by an order made under the authority of the statute passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further amendment of the laws relating to the poor in England," at the petty sessions holden in and for the division, [or "city, borough, or other place,"] of , in the county of , on the day of , in the year of our Lord one thousand eight hundred and , by her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] acting in and for the said division, [or "city, borough, or other place,"] then and there assembled, of , in the county, [or "city, borough, or other place,"] of , was adjudged to be the putative father of a bastard child then lately born of her body; and that in and by the said order it was ordered that the said should pay to her the said , so long as she should live, and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child, under the provisions of the said statute, the sum of per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of per week, until such child should attain the age of thirteen years, or should die, or that she the said mother should marry, and the sum of ten shillings for the midwife, and the sum of for the costs incurred in obtaining such order; and that the said had had due notice of the said order, and that the said bastard child was then living, under the age of thirteen years, and that she the said mother had not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said , and that there was then in arrear for the same the sum of , being the amount of arrears for weeks' payments, and ten shillings for the midwife, and the sum of for costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and seal, directed to the constable of the said parish of , and all her Majesty's officers of the peace in and for the said county, [or "city, borough, or other place,"] commanded him forthwith to apprehend the said , and to convey him before two of her Majesty's justices of the peace in and for the said county, [or "city, borough, or other place,"] to answer the premises, and be dealt with according to law.

5. Forms.

Whereupon the said , being now brought before us, two of her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] to shew cause why the same should not be paid, hath not shewn any cause why the same should not be paid; and the same duly appearing upon oath [or "affirmation,"] to be due from the said , under the said order, together with the further sum of for the costs attending such warrant, apprehension, and bringing up of him, the said , nevertheless neglects [or "refuses"] to make payment of the said sums due under the said order, and the said sums so due for such costs:

And whereas it appears to us, upon the admission of the said , that no sufficient distress can be had upon his goods and chattels for the recovery of the said several sums:

These are therefore to command you the said constable of , to convey the said , to the said common gaol, [or "house of correction,"] at , and these are also to command you the said keeper of the said common gaol [or "house of correction,"] to receive the said , into the said common gaol [or "house of correction,"] there to remain without bail or main-prize for the term of [not to exceed three calendar months,] , unless such sum and costs, together with [where warrants are issued after the passing of this Act, the justices should insert the amount of these costs and charges,] the costs and charges attending the commitment and conveying of the said , to the said common gaol [or "house of correction,"] and of the persons employed to convey him thither, be sooner paid and satisfied.

Given under our hands and seals, at , in the county of , this day of , in the year of our Lord one thousand eight hundred and J. S. (L. S.)
G. R. (L. S.)

To the constable of , in the county, [or "city, borough, or other place,"] of , and to the keeper of the common gaol, [or "house of correction,"] at , in the county of (15.) Warrant of commitment in default of distress.

Whereas information and complaint were, on the day of , in the year of our Lord one thousand eight hundred and , made upon oath [or "affirmation,] before , one of her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] by of the parish of , in the county, [or "city, borough, or other place,"] of , single woman, that by an order made under the authority of the statute passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further amendment of the laws relating to the poor in England," at the petty session holden in and for the division, [or "city, borough, or other place,"] of , in the county of , on the day of

, in the year of our Lord one thousand eight hundred and , by her Majesty's justices of the peace for the said county, [or "city, borough, or other place,"] acting in and for the said division, [or "city, borough, or other place,"] then and there assembled, of , in the county, [or city, borough, or other place,"] of , was adjudged to be the putative father of a bastard child then lately born of her body, and that in and by the said order it was ordered that the said should pay to her the said , so long as she should live and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child, under the provisions of the said statute, the sum of per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of per week until such child should attain the age of thirteen years, or should die, or that she the said mother should marry, and the sum of ten shillings for the midwife, and the sum of for the costs incurred in obtaining such order; that the said , had had due notice of the said order, and that the said bastard child was then living under the age of thirteen years, and that she the said mother had not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said , and there was then in arrear for the same the sum of , being the amount of arrears for weeks' payments, and ten shillings for the midwife, and the sum of for the costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and seal, directed to

5. Forms.

the constable of the said parish of _____, and all her Majesty's officers of the peace in and for the said county, [or "city, borough, or other place,"] commanded him forthwith to apprehend the said _____, and to convey him before two of her Majesty's justices of the peace for the said county [or "city, borough, or other place,"] to answer the premises, and to be dealt with according to law. Whereupon the said _____ being brought before two of her Majesty's justices of the peace for the said county [or "city, borough, or other place,"] to shew cause why the same should not be paid, did not shew any cause why the same should not be paid; and the same duly appearing upon oath to be due from the said _____, under the said order, together with the further sum of _____, for the costs attending such warrant, apprehension, and bringing up of him, but the said _____ neglecting [or "refusing"] to make payment of the said sums due under the said order, and the said sums so due for such costs, the justices required the constable of the parish of _____, in the said warrant mentioned, forthwith to make distress of the goods and chattels of the said _____, and if no such distress could be found then to certify the same unto them, or unto _____, two of her Majesty's justices of the peace acting for the said county, [or "city, borough, or other place,"] to the end that such further proceedings might be had therein as to law appertained.

And whereas it appears to us _____, two of her Majesty's justices of the peace acting for the said county, [or "city, borough, or other place,"] by return of the said constable of the said _____, dated the _____ day of _____ that he hath made diligent search, but doth not know of nor can find any goods and chattels of the said _____, by distress and sale whereof the said sums and costs can be recovered, pursuant to the said warrant; and that the said costs, incurred by the said constable in attempting to make such distress are shillings, _____.

And the said _____, is now before us [insert "in custody of the said constable;" or "according to the exigency of a recognizance duly entered into by him on the _____ day of _____ last."] _____.

These are therefore to command you the said constable of _____, to convey the said _____, to the said common gaol [or "house of correction,"] and these are also to command you the said keeper of the said common gaol [or "house of correction,"] to receive the said _____, into the said common gaol [or "house of correction,"] there to remain without bail or mainprize for the term of [not to exceed three calendar months,] _____, unless such sums and costs, and the aforesaid charges attending the attempt to make the said distress, together with the costs and charges [where warrants are issued after the passing of this Act, the justices should insert the amount of these costs and charges,"] attending the commitment and conveying of the said _____, to the said common gaol [or "house of correction,"] and of the persons employed to convey him thither, be sooner paid and satisfied.

Given under our hands and seals, at _____, in the county of _____, this _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____.

J. S. (L. S.)

G. R. (L. S.)

(16.) Appointment of guardian to the bastard child. (8 Vict. c. 10, Sched. 16.)

Whereas the justices assembled at a petty sessions of her Majesty's justices to wit, _____ of the peace for the county [or "city, borough, or other place,"] of _____, holden in and for the division of [or "city, borough, or other place,"] in the county of [or "city, borough, or other place,"] at _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____, by an order under their hands and seals, reciting that one _____, single woman, residing at _____, within the said division [or "city, borough, or other place,"] did, on the _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____, make application to _____, one of her Majesty's justices of the peace acting for the said division [or "city, borough, or other place,"] for a summons to be served upon one _____, and the said justice thereupon issued his summons to the said _____, to appear at a petty sessions to be holden on the _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____, for the said division [or "city, borough, or other place,"] in which he usually acted, to answer her complaint touching the premises: [this form must be completed, in regard to the recitals, by reference to the order of the justices.]

And that the said _____, having been duly served with the said summons, within forty days from the said _____ day of _____, and that the said _____, having then applied to the said justices in petty sessions assembled for

an order upon the said _____, according to the form of the statute in such case made and provided: And that it having been then proved to the said justices _____, that the said child was since [or "within six calendar months before,"] the passing of an Act passed in the eighth year of the reign of her present Majesty, intituled, "An Act for the further amendment of the laws relating to the poor in England," (that is to say,) on the _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____, born a bastard of the body of the said _____: And that the said justices having heard the evidence of such woman, and such other evidence as she had produced _____, and the evidence of the said _____, the mother of the said child, having been corroborated in some material particular by other testimony, to their satisfaction, did adjudge the said _____, to be the putative father of the said child; and, having regard to all the circumstances of that case, did order that the said _____, should pay unto _____, the mother of the said bastard child, so long as she should live and be of sound mind, and be not in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of such child, under the provisions of the said statute, the sum of _____, until the said child should attain the age of thirteen years, or should die, or the said _____, should marry: And they did further order the said _____, to pay to the said _____, the sum of _____, being the costs incurred in obtaining their order:

And whereas the said _____, hath not married since the making of the said order, but hath lately _____, [died, or become of unsound mind, or is now in the gaol or prison of _____, in the county of _____, or is under sentence of transportation,] and the said child is still alive, and under the age of thirteen:

Now we, _____, two of her Majesty's justices of the peace acting in and for the county [or insert "city, borough, or other place,"] of _____, do hereby order and appoint one _____, of _____, in the county of _____ [or insert "city, borough, or other place,"] not being an officer of any parish or union, and having consented thereto, to have the custody of such bastard child, so long as such bastard child shall not be chargeable to any parish or union.

Given under our hands and seals, at _____, in the county of _____, [or insert "city, borough, or other place,"] this _____ day of _____, in the year of our Lord one thousand eight hundred and forty _____.

J. S. (L. S.)

G. R. (L. S.)

N.B.—A duplicate of this appointment is to be sent through the post or otherwise, by the clerk of the justices, to the clerk of the guardians of the union or parish wherein the mother of the said child resided at the time when she died, or ceased to be entitled to receive the payments under the order.

Baths and Wash-houses.

[9 & 10 Vict. c. 74; 10 & 11 Vict. c. 61]

- I. Where and by whom Act may be adopted, 435.
- II. Proceedings of Commissioners, 437.
- III. Powers of Commissioners in executing the Act, 439.
- IV. As to Management and Control.—Bye-laws, 442.
- V. Penalties, 443.
- VI. Rules for Interpretation of Acts, 443.

I. Where and by whom Act may be adopted.

THE 9 & 10 Vict. c. 74, intituled "An Act to encourage the Establishment of Public Baths and Wash-houses" [26th August, 1846] recites, "It is desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts to encourage the establishment therein of public baths and wash-houses, and open bathing places:" and enacts,

9 & 10 Vict.
c. 74.

1. *Where and by whom Act may be adopted.*

Act may be adopted in certain boroughs and parishes.

Council of any borough may adopt the provisions contained in this Act, if they think fit,

Expenses of carrying this Act into execution shall be charged upon the borough fund, and income arising carried to same.

On the requisition of ten ratepayers, churchwardens, &c., to convene vestry meeting to determine whether this Act shall be adopted;

and if adopted a copy of resolution to be sent to secretary of state, &c.

No resolution deemed to be carried unless two-thirds vote for it.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

Acts of commissioners of public baths, &c., to be valid,

“that this Act may be adopted for any incorporated borough in England which is regulated under 5 & 6 Will. IV. c. 76, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also with the approval of one of her Majesty's principal secretaries of state, for any parish in England not within any such incorporated borough.”

Sect. 3. “That the council of any such borough as aforesaid may, if they think fit, determine that this Act shall be adopted for such borough, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and this Act shall be carried into execution in such borough in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough.”

Sect. 4. “That the expenses of carrying this Act into execution in any such borough in which the council shall have resolved to adopt this Act for their borough shall be chargeable upon and paid out of the borough fund, and for that purpose the council may levy with and as part of the borough rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the said Act of the sixth year of the reign of his late Majesty; and the income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of this Act, to be called ‘the public baths and wash-houses account.’”

Sect. 5. “That upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal secretaries of state, for his approval, and as soon as such approval shall have been signified in writing, under the hand of any such secretary of state, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: provided always, that no such resolution of the vestry shall be deemed to be carried unless at least two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.”

Sect. 6. “That in such case the vestry shall appoint not less than three nor more than seven persons, being rate-payers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate reappointment.”

By 10 & 11 Vict. c. 61, s. 3. “That when any person shall have been appointed to the office of commissioners of public baths and wash-houses for any parish before the passing of this Act, the recited Act

shall be deemed to have been duly adopted for such parish notwithstanding that there may have been any defect or irregularity in or in any way concerning such adoption; and all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for any defect or irregularity in or in any way concerning his appointment to such office be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity."

By the "Local Government Act, 1858," (21 & 22 Vict. c. 98, s. 47,) "In any district where a vestry adopts the Act 9 & 10 Vict. c. 74, intituled 'An Act to encourage the Establishment of Public Baths and Wash-houses,' the local board may, at the option of the said vestry, be the commissioners for the execution of the said Act, and shall thereupon have all the powers, duties, rights, and obligations of commissioners under the said Act, and all expenses incurred by the local board in carrying into execution the powers given to them by the said Act shall be defrayed out of general district rates and all receipts by them by reason of the exercise of such powers shall be carried to the district fund account."

By 29 & 30 Vict. c. 90 ("The Sanitary Act," 1866,) s. 43, "Local boards, acting in the execution of 'The Local Government Act, 1858,' may adopt the Act to encourage the establishment of public baths and wash-houses and any Act amending the same, for districts in which those Acts are not already in force, and when they have adopted the said Acts they shall have all the powers, duties, and rights of commissioners under the said Acts: and all expenses incurred by any local board in carrying into execution the Acts referred to in this section shall be defrayed out of the general district rates, and all receipts by them under the said Acts shall be carried to the district fund account."

2. Proceedings of Commissioners.

notwithstanding informalities.

A local board under the "Local Government Act, 1858," may act as commissioners, with the consent of the vestry.

Under the "Sanitary Act, 1866," local boards may adopt 9 & 10 Vict. c. 74.

II. Proceedings of Commissioners.

By 9 & 10 Vict. c. 74, s. 7. "That any commissioner may at any time resign his office as a commissioner on giving seven days' notice in writing of his intention to resign to the clerk, and also to the church-wardens."

Sect. 8. "That any vacancies in the commissionership may be filled up by the vesty when and as the vestry shall think fit."

Sect. 9. "That the commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified."

Sect. 10. "That the commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named."

Sect. 11. "That at all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners."

Sect. 12. "That the commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for

Resignation of commissioners.

Vacancies to be filled up by vestry.

Meetings of the commissioners.

Special meetings of commissioners.

Quorum of meetings of commissioners.

Commissioners may appoint and remove officers, &c.

2. *Proceedings of Commissioners.*

Minutes of proceedings of commissioners to be entered in a book.

Commissioners to keep accounts, which shall be open to inspection.

Penalty for refusing to allow inspection.

Auditors to be appointed yearly, who shall examine the accounts, and report to vestries

Expenses of executing Act in any parish to be paid out of the poor's-rate.

Overseers to levy, as part of the poor's-rate, such sums as vestry shall deem necessary to pay expenses.

Monies raised and the income arising from baths, &c., in the parish to be applied towards defraying expenses.

such clerk, officers, and servants, and when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office."

Sect. 13. "That all orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever."

Sect. 14. "That the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and rate-payer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or rate-payer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds."

Sect. 15. "That the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint, the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry."

Sect. 16. "That the expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the monies to be raised or applicable for the relief of the poor of the parish."

Sect. 17. "That for defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts."

Sect. 18. "That the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after re-payment of all monies borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the

vestry at which the yearly report of the auditors shall be produced, any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish."

Sect. 19. "That the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner, not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such secretary of state, be agreed on between such vestries that any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parishes accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses."

Sect. 20. "And for the more easy execution of the purposes of this Act, be it enacted, that the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of 'the commissioners for public baths and wash-houses in the parish of () in the county of (),' and by that name may sue and be sued in all courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act."

Sect. 21. "That for carrying this Act into execution in any borough or parish respectively, the council, with the approval of the commissioners of her Majesty's Treasury, and the commissioners, with the sanction of the vestry, and also with the approval of the commissioners of her Majesty's Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly."

3. Powers of Commissioners.

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of secretary of state.

Incorporation of commissioners.

Councils, &c., may borrow money for the purposes of the Act, with the approval of the Treasury.

III. Powers of Council, Commissioners, &c., to purchase Land, borrow Money, &c.

By the 9 & 10 Vict. c. 74, s. 22, "That the commissioners for carrying into execution 5 Vict. sess. 2, c. 9, may from time to time make to the council of any such borough, or commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of the borough fund, or the rates for the relief of the poor of the parish, as the case may be."

By the 10 & 11 Vict. c. 61, s. 4, "That the Lands Clauses Consolidation Act, 1845, shall be incorporated with the recited Act and this Act:

The Public Works Loan Commissioners may advance money for the purposes of this Act.

Incorporation of 8 & 9 Vict. c. 18.

3. *Powers of Commissioners.*

Purchase of lands.

s & 9 Vict. c. 10, incorporated with this Act for certain purposes.

Council may appropriate, with consent of the Treasury, lands vested in the mayor, &c.

Commissioners may, with approval of vestry, &c., appropriate lands belonging to parish;

or contract for purchase of the same.

Councils and commissioners may erect, &c., public baths and wash-houses and open bathing places.

Proportion of baths for the labouring classes.

Proportion of washing accommodation for labouring classes.

provided always, that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement."

By the 9 & 10 Vict. c. 74, s. 23, "That the provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act (a); and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the commissioners; and so much of such provisions as are applicable to the 'secretary of the company' shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the rate-payers, shall have the privileges of shareholders."

Sect. 24. "That in any such borough the council, with the approval of the commissioners of her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Commissioners for England and Wales, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish."

Sect. 25. "That the council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths and wash-houses, and as to such wash-houses either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences."

Sect. 36. "That the number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings."

By 10 & 11 Vict. c. 61, s. 5, "That the number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if

(a) See *infra*, "Companies Clauses Consolidation Act."

but one, or of all the higher classes if more than one, in the same building or buildings."

By 9 & 10 Vict. c. 74, s. 26, "That the council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts or true copies thereof, shall be entered in books to be kept for that purpose: provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price."

Sect. 27. "That the council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish."

Sect. 28. "That any commissioners of water-works, trustees of water-works, water companies, canal companies, gas companies, and other corporations, bodies, and persons having the management of any water-works, canals, reservoirs, wells, springs, and streams of water, and gas-works respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open bathing places, either without charge or on such other favourable terms as they shall think fit."

Sect. 29. "That nothing in this Act contained shall render any member of the council of any borough, or any commissioner, personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or commissioners respectively in pursu-

3. Powers of Commissioners.

Councils and commissioners may enter into contracts for the purposes of this Act.

No contract above 100*l.* to be entered into without notice.

Council and commissioners may purchase existing baths, &c.

Power to water and gas companies to supply water and gas to baths, &c.

Councillors and commissioners not to be personally liable.

4. *Management and Control.*

Persons may appeal against orders of council and commissioners.

Council, &c., empowered to make sale and exchange of lands, with consent.

When baths, &c., are considered too expensive, they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's-rate.

ance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act."

Sect. 30. "That every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty."

Sect. 31. "That the council, with the approval of the commissioners of her Majesty's Treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the commissioners of her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly."

Sect. 32. "That whenever any public baths or wash-houses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the commissioners of her Majesty's Treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the commissioners, shall convey the same accordingly; and the purchase-money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish."

IV. *Management and Control.—Bye-laws.*

Management to be vested in councils and parish commissioners.

Council, &c., may make bye-laws for regulating the use of baths and wash-houses, &c., and charges thereat.

Bye-laws to be approved by the secretary of state.

By 9 & 10 Vict. c. 74, s. 33, "That the general management, regulation, and control of the public baths and wash-houses and open bathing places established under this Act shall, subject to the provisions of this Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners."

Sect. 34. "That the bye-laws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce, shall include such bye-laws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any bye-law made by them respectively; and such bye-laws shall make sufficient provision for the several purposes respectively expressed in the schedule (A.) to this Act: provided always, that no bye-law made under the authority of this Act shall be of any legal force until the same shall have received the approval of one of her Majesty's principal secretaries of state."

Sect. 35. "That a printed copy or sufficient abstract of the bye-law relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the bye-laws relating to the use of the wash-houses shall be put up in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every wash-house."

Sect. 37, repealed by 10 & 11 Vict. c. 61, s. 6.

By 10 & 11 Vict. c. 61, s. 7, "That the council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the schedule (*post*, (2)) annexed to this Act."

By 9 & 10 Vict. c. 74, s. 38, "That for the recovery of the charges at such wash-houses, the officers, servants, and others having the management thereof, may detain the clothes brought to be washed, or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days, may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge, and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person."

6. Interpretation of Acts.

Copies or abstracts of bye-laws to be hung up in every bath room, &c.

Power to make charges for use of baths, &c., not exceeding those in the schedule.

As to recovery of charges at wash-houses.

V. Penalties.

By 9 & 10 Vict. c. 74, s. 39, "That if any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne, or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council, or commissioner, shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds."

Penalty for council, commissioners or officers taking fees beyond salaries, or being interested in contracts.

Sect. 40. "That such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof."

Application of penalties.

VI. Interpretation of Acts.

By 9 & 10 Vict. c. 74, s. 2. "That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say:—

"'Parish'" shall mean every place having separate overseers of the

Interpretation of Act.

6. *Inter-
pretation of
Acts.*

- poor, and separately maintaining its own poor : [and also every place maintaining its own poor, and having a vestry (10 & 11 Vict. c. 61, s. 2):]
- “ ‘Borough’ ” shall mean city, borough, port, cinque port, or town corporate :
- “ ‘Rate payers’ ” shall mean such of the persons for the time being assessed to and paying rates for the relief of the poor of the parish as for the time being shall be duly qualified to vote for the election of overseers for the parish : [rate payers shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish (10 & 11 Vict. c. 61, s. 2):]
- “ ‘Churchwardens’ ” shall mean also chapelwardens, or other persons discharging the duties of churchwardens :
- “ ‘Overseers’ ” shall mean also any persons authorised and required to make and collect, or cause to be collected, the rate for the relief of the poor of the parish, and acting instead of overseers of the poor :
- “ ‘Vestry’ ” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under 59 Geo. III. c. 12, or elected under 1 & 2 Will. IV. c. 60, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, [and also any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom or otherwise, as or instead of a vestry or select vestry (10 & 11 Vict. c. 61, s. 2),] unless there be something in the subject or context repugnant to such construction.
- “ ‘Commissioners’ ” shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners :
- “ ‘Clerk’ ” shall mean, as regards an incorporated borough, the town clerk of such borough, and as regards a parish, the clerk appointed pursuant to this Act by the commissioners :
- “ ‘Justice’ ” shall mean justice of the peace for the county, riding, division, liberty, borough or place where the matter requiring the cognizance of justices shall arise :
- “ ‘Lands’ ” shall mean lands, tenements and hereditaments of whatsoever nature or tenure :
- Words importing the masculine gender shall include the feminine :
- Words of the plural number shall include the singular, and words of the singular number shall include the plural.

SCHEDULE (1).

Bye-Laws to be made in all cases.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language, and behaviour and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

SCHEDULE (2).

6. *Inter-
pretation of
Act**Charges for the Baths and Wash-houses and open Bathing Places.*

1. BATHS FOR THE LABOURING CLASSES.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old :

Cold bath, or cold shower bath, any sum not exceeding . One penny.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding . Two-pence.

For several children, not above eight years old, nor exceeding four, bathing together :

Cold bath, or cold shower bath, any sum not exceeding . Two-pence.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding . Four-pence.

2. BATHS OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. WASH-HOUSES FOR THE LABOURING CLASSES.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

For one hour only in any one day, any sum not exceeding . One penny.

For two hours together, in any one day, any sum not exceeding . Three-pence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. WASH-HOUSES OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit.

5. OPEN BATHING PLACES.

Where several persons bathe in the same water, for one person one halfpenny.

Bent.

BY stat. 15 Geo. II. c. 33, s. 6, whereas on the north-west coast of 15 Geo. 2, c. 38. England, and especially in the county of Lancaster, the sea is bounded, and the lands are prevented from being overflowed by large hills, the sand of which is so loose that in dry weather it is thrown by the winds on the adjacent lands, to the damage thereof and the danger of the inhabitants, who are exposed thereby to the inundation of the sea; to prevent which the land-owners are at great charges annually, to plant

Betting Houses.

and maintain a sort of rush or shrub, called starr or bent, but many disorderly persons pluck up and carry away the same to make mats and brushes; therefore, if any person without the consent of the owner shall cut, pull up, or carry away any starr or bent, planted or set on the said hills on the north-west coasts of England, on complaint thereof on oath to one justice, the offender shall be summoned; and on default of appearing, the justice shall issue his warrant to apprehend and bring him before him; and being convicted on oath of one witness or confession, he shall forfeit twenty shillings, half to the informer and half to the owner of the bent by distress; and for want of sufficient distress, be sent to the house of correction for three months, to be kept to hard labour; and for a second offence, he shall be committed to the house of correction for one year, to be whipped and kept to hard labour.

Sect. 7. And if any starr or bent shall be found within five miles of the said sand hills, the persons convicted of having the same in custody shall forfeit twenty shillings in like manner, and for want of sufficient distress shall be committed to the house of correction, there to be kept to hard labour for three months.

Sect. 8. But this shall not restrain any person from the exercise of any ancient prescriptive right to cut starr or bent on the sea coasts in the county of Cumberland.

Betting Houses.

[16 & 17 Vict. c. 119.]

FOR the purpose of suppressing betting houses, or offices where money was received in advance, by persons occupying or owning them, or persons employed on their behalf, by way of betting in horse races and like contingencies, it was granted by the 16 & 17 Vict. c. 119;—

No house, &c.,
to be kept for
purpose of owner
or occupier
betting with
other persons.

Sect. 1. "No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any insurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law."

"Office or place.

A tree or clump of trees in Hyde Park to which a person was in the habit of resorting for the purpose of betting with other persons resorting thereto, is not a place contemplated by the first section. (*Doggett v. Catterns*, 19 C. B. N. S. 765; 34 L. J. C. P. 159, (*Exch.*), reversing the decision of the Court below, 17 C. B. 669; 34 L. J. C. P. 46.) But a temporary wooden structure erected during the races, where the business of betting was carried on, is an "office," or place within the above section. (*Shaw, app., Morley, resp.*, 3 L. R. *Ex.* 137; 37 L. J. M. C. 105.)

Betting houses
to be gaming
houses within
8 & 9 Vict. c. 109.

Sect. 2. "Every house, room, office, or place opened, kept, or used for the purposes aforesaid, or any of them, shall be taken and deemed to be

a common gaming house within the meaning of an Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred and nine, 'to amend the law concerning 'games and wagers.'"

Sect. 3. "Any person who being the owner or occupier of any house, office, room, or other place, or a person using the same, shall open, keep, or use the same for the purposes herein-before mentioned, or either of them; and any person who being the owner or occupier of any house, room, office, or other place shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid, or either of them; and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, shall, on summary conviction thereof before any two justices of the peace, be liable to forfeit and pay such penalty, not exceeding one hundred pounds, as shall be adjudged by such justices, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the non-payment of such penalty and costs, or in the first instance, if to the said justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding six calendar months."

An information for keeping a house for the purpose of betting, and alleges the keeping and using of the house on a certain day and divers other days is good, (*Onley v. Gee*, 30 *L. J. M. C.* 222,) and when the information fixed 5th of October, and divers other days, proof of the house being used for the purpose of betting on the 8th of November, will support a conviction thereunder. (*ib.*)

Quære, whether an indictment for an offence against this section would lie; see *Reg. v. Crawshaw*, (*Bell C. C.* 303; 30 *L. J. M. C.* 58.)

Sect. 4. "Any person, being the owner or occupier of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, or any person acting for or on behalf of any such owner or occupier, or any person having the care or management or in any manner assisting in conducting the business thereof, who shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on condition of paying any sum of money or other valuable thing on the happening of any event or contingency of or relating to a horse race or any other race, or any fight, game, sport, or exercise, or as or for the consideration for any assurance, undertaking, promise, or agreement express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency, and any person giving any acknowledgment, note, security, or draft on the receipt of any money or valuable thing so paid or given as aforesaid purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay such penalty, not exceeding fifty pounds, as shall be adjudged by such justices, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the nonpayment of such penalty and costs, or in the first instance if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding three calendar months."

Sect. 5. "Any money or valuable thing received by any such person aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement, as aforesaid, shall be deemed to have been received to or for the use of the person from whom the same was received, and such money or valuable thing, or the value thereof, may be recovered accordingly, with full costs of suit, in any court of competent jurisdiction.

Betting Houses.

Penalty on owner or occupier of betting-house.

Allegations in information.

Penalty on persons receiving money on condition of paying money on event of any bet.

Money so received may be recovered from the persons receiving the same.

Betting Houses.

This Act not to extend to stakes due to owner of horse winning a race.

Penalty on persons exhibiting placards or advertising betting houses.

Penalties and costs may be levied by distress.

Application of penalties.

On neglect to prosecute any summons, justices may authorize some other person to proceed.

Sect 6. "Provided always, That nothing in this Act contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race, or lawful sport, game, or exercise, or to the owner of any horse engaged in any race."

Sect. 7. "Any person exhibiting or publishing or causing to be exhibited or published any placard, handbill, card, writing, sign, or advertisement whereby it shall be made to appear that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers, in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making bets or wagers, in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or person using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers, in manner aforesaid, shall, upon summary conviction thereof before two justices of the peace, forfeit and pay a sum not exceeding thirty pounds, and may be further adjudged by such justices to pay such costs attending such conviction as to the said justices shall seem reasonable; and on the nonpayment of such penalty and costs, or in the first instance if to such justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding two calendar months.

Sect. 8. "If any person convicted under this Act on information before justices shall be adjudged to pay any penalty, or any costs and charges attending the conviction, and shall fail to pay such penalty or costs, the same may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of one of the convicting justices: provided always, that if any person shall be committed to prison for default of payment of any penalty and costs then the costs alone may be levied by distress as aforesaid."

Sect. 9. "One-half of every pecuniary penalty which shall be adjudged to be paid under this Act shall be paid to the informer, and the remaining half shall be applied in aid of the poor rate of the parish in which the offence shall have been committed, and shall be paid for that purpose to the overseer or other person authorized to receive poor rates in such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then the justices by whom such penalty shall be adjudged to be paid shall direct such remaining half thereof to be applied in aid of the poor rate of such extra-parochial place, or, if there shall not be any poor rate therein, in aid of the poor rate of any adjoining parish or district."

With respect to the application of penalties recovered under the Gaming Houses Act, 17 & 18 Vict. c. 38, ss. 8, 9, it has been held impliedly to contain the exception, "unless recovered or adjudged before the police courts in the metropolis." (*Wray v. Ellis*, 1 E. & E. 276; 28 L. J. M. C. 45.) Therefore the receiver of the metropolitan police is entitled, under the 2 & 3 Vict. c. 71, s. 47, to one half of any penalty recovered before a police magistrate and not the overseer. (*ibid.*)

Sect. 10. "In case any person who shall have laid any complaint or information in respect of any offence against this Act shall not appear at the time at which the defendant may have been summoned to appear, or at any time to which the hearing of the summons may have been adjourned, or, in the opinion of any justices having authority to adjudicate with respect to the offence charged in such information or complaint as aforesaid, shall otherwise have neglected to proceed upon or prosecute such information or complaint with due diligence, it shall be lawful for such justices to authorize any other person to proceed on such summons instead of the person to whom the same may have been granted, or, if such justices think fit, to dismiss the summons already granted, and authorize any person to take out a fresh summons in res-

pect of the offence charged in such information or complaint, in like manner as if the previous summons had not been granted."

Sect. 11. "It shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, office, room, or place to be kept or used as a betting-house or office, contrary to this Act, to give authority by special warrant under his hand, when in his discretion he shall think fit, to any constable or police officer, to enter, with such assistance as may be found necessary, into such house, office, room, or place, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of the peace all such persons found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises; and any such warrant may be according to the form given in the first schedule annexed to the before-mentioned Act 'to amend the law concerning games and wagers.'"

Sect. 12. "If any superintendent belonging to the metropolitan police force shall report in writing to the commissioners of police of the metropolis that there are good grounds for believing and that he does believe that any house, office, room, or place within the metropolitan police district is kept or used as a betting house or office, contrary to this Act, it shall be lawful for either of the said commissioners by order in writing to authorize the superintendent to enter any such house, office, room, or place, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises."

Sect. 13. "Any person who shall be summarily convicted under this Act may appeal to the next general or quarter sessions of the peace to be holden for the county or place wherein the cause of complaint shall have arisen, provided that such person at the time of the conviction give notice of his intention to appeal, and shall at the time of such conviction, or within forty-eight hours thereafter, enter into a recognizance with two sufficient securities conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the court at such sessions, and to pay such costs as shall be by the last-mentioned court awarded; and it shall be lawful for the magistrate or justices by whom such conviction shall have been made to bind over any party who shall have made information against the party convicted, and any witnesses who shall have been examined, in sufficient recognizances to attend and be examined at the hearing of such appeal; and every such witness on producing a certificate of being so bound under the hand of the said magistrate or justices shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place in like manner as in cases of misdemeanour under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, intituled 'An Act for improving the Administration of Criminal Justice in England;' and in case any such appeal shall be dismissed and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be re-paid to the said treasurer by the appellant."

Sect. 14. "On any such appeal no objection shall be allowed to the information whereon the conviction has taken place, or to such conviction on any matter of form, or on any insufficiency of statement, provided it shall appear to the justices in quarter sessions that the defendant has been sufficiently informed of the charge intended to be made against him, and that such conviction was proper on the merits of

Betting Houses.

Justices may authorize search of suspected houses.

Commissioner of Police may authorize superintendent of police to enter and search suspected houses.

Appeal to quarter sessions.

7 & 8 Geo. IV., c. 28.

No objection in matter of form and *certiorari* taken away.

Betting Houses.

Distress not unlawful for want of form.

Tender of amends, &c.

Notice and limitation of actions.

the case; and no information, conviction, or judgment of the justices in general or quarter sessions shall be removed by *certiorari* into the Court of Queen's Bench."

Sect. 15. "When any distress shall be made for any money to be levied by virtue of the warrant of any justice under this Act, the distress shall not be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, warrant of apprehension, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser from the beginning on account of any irregularity which shall be afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage by an action on the case in any of her Majesty's courts of record."

Sect. 16. "No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding before such action brought, and in case no tender shall have been made it shall be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined to pay into court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such court as in other actions where defendants are allowed to pay money into court."

Sect. 17. "No action, suit, or information, or any other proceeding, of what nature soever, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such suit, information, or other proceeding to the intended defendant one calendar month at least before prosecuting the same, nor unless such action, suit, information, or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of, or in case there shall be a continuation of damage then within three calendar months next after the doing such damage shall have ceased."

Bigamy.

What.

THE offence of, and punishment for.—Bigamy is where a man has two wives successively; polygamy, where he hath several wives at the same time; but they are commonly confounded one with the other. (See 4 *Bla. Com.* 163; *Bac. Ab. Bigamy.*)

24 & 25 Vict.
c. 100.

The 24 & 25 Vict. c. 95, repeals 9 Geo. IV. c. 31, which repealed the 1 Jac. I. c. 11, except as to offences committed before or on the 30th June, 1828, and it is now enacted by 24 & 25 Vict. c. 100, s. 57, "That whosoever being married, shall marry any other person, during the life of the former husband or wife, (whether the second marriage shall have taken place in England or Ireland, or elsewhere,) shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and any such offence may be dealt with, inquired of, tried, determined, and punished, in the county where the offender shall be apprehended, or be in custody, as if the offence had been actually committed in that county or place: Provided that nothing in this section contained shall extend to

Venue.

any second marriage contracted elsewhere than in England and Ireland, by any other than a *subject of her Majesty, or to any person marrying a second time*, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.”

The imprisonment may be in the gaol or house of correction. (24 & 25 Vict. c. 100, s. 69.)

By the 7 & 8 Geo. IV. c. 28, s. 10, if the convict be already under sentence of transportation or imprisonment, the sentence for bigamy may commence after the expiration of the former sentence.

Principals in the second degree and accessaries before the fact are punishable in the same manner as the principal in the first degree is by this Act punishable. (S. 67.)

By sect. 67, accessaries after the fact are liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years. (See further, tit “Accessary, ante, p. 16.)

By the 5 & 6 Vict. c. 38, s. 1, this offence is not triable at any quarter sessions.

To constitute the offence, it must be proved that at the time of the second marriage the offender was then already legally married to another. (Per Bayley, J., in *Smith v. Huson*, 1 Phill. 287.) The law will not presume a valid marriage in cases of bigamy, as it will in civil cases. (*Ib.*)

The now repealed Act of 1 Jac. I. extended to a marriage *de facto*, or voidable by reason of consanguinity, affinity, or such like; for it was a marriage in judgment of law until it was avoided; and, therefore, though neither marriage *de jure*, yet they were within that Act. (3 Inst. 88; see *R. v. Jacobs*, R. & M. 140.)

But now, since the 5 & 6 Will. IV. c. 54, ss. 1, 2, it would seem that where a marriage takes place within the prohibited degrees of consanguinity or affinity, as such marriage is wholly void, a second marriage will not amount to the offence of bigamy. (See 1 *Russ. on Crimes*, 4th ed. 274; *Reg. v. St. Giles’ in the Fields*, 11 Q. B. 173; *Reg. v. Chadwick*, 11 Q. B. 173.) A marriage unlawful between legitimate relations is equally so between natural relations though illegitimate; therefore, marriage with the daughter of the illegitimate half sister of a deceased wife is void. (*Reg. v. Brighton, Inhabitants of*, 1 B. & S. 447; 30 L. J. M. C. 197.)

And in all cases, if the first marriage be not voidable merely, but void, the second will not constitute bigamy; as, for instance, if a woman marry A., and in the lifetime of A. marry B.; and after the death of A. and whilst B. is alive, she marry C.; she cannot be indicted for bigamy in her marriage with C., because her marriage with B. was a mere nullity. (1 *Hale*, 693.)

So, the marriage of an idiot, or of a lunatic not in a lucid interval, is void, because he is deemed in law incapable of entering into such a contract. (1 *Russ. on Crimes*, 4th ed. 316; 1 *Bl. Com.* 438, 439; see 15 Geo. II. c. 30.)

It has been held, that a marriage celebrated in Ireland between a Roman Catholic and a Protestant, by a Roman Catholic priest, is void. (*R. v. Orgill*, 9 C. & P. 80.) See further as to marriages in Ireland, *R. v. Bathwick*, 2 B. & Ad. 639; *R. v. Jacobs*, R. & M. 140; 1 *Russ. on Crimes*, 4th ed. 311, et seq.)

As to the Marriage Acts now in force, and as to what marriages are valid or not, see tit. “Marriage,” Vol. III.; also see 1 *Russ. on Crimes*, 4th ed. 263.

Bigamy.

Exceptions.

Punishment.

If offender be already a convict.

Accessaries.

Not triable at sessions.

To constitute the offence, a valid first marriage must be proved.

Bigamy.

The exceptions
in the statute.

British subject
marrying abroad.

Colonial
marriage.

Continual
absence for
seven years and
no knowledge
of existence of
wife.

Onus of proof.

Divorce.

We have seen that the statute excepts four cases in which the second marriage will not be deemed felony.

It excepts the case of a second marriage contracted out of England by any other than a subject of the Queen; but a subject of her Majesty, who marries a woman in Scotland, and subsequently, that woman being alive, marries another woman in Scotland, has committed bigamy contrary to the above statute. (*Reg. v. Topping, Dears. C. C. 647*; *25 L. J. M. C. 72.*)

By the 28 Vict. c. 64, every law made by the legislature, or any authority competent to make laws for any of her Majesty's possessions abroad, for the purpose of establishing the validity of any marriage or marriages contracted in such possession, shall have and be deemed to have had, from the date of the making of such law, the same force and effect for the purpose aforesaid, within all parts of her Majesty's dominions, as such law would have within the possession for which the same was made: Provided, that nothing in this law contained shall give any effect or validity to any marriage, unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same.

It also excepts a second marriage, where the former husband or wife has been continually absent from such person for seven years then last past, and shall not have been known by such person to be living within that time. It seems, that the true construction of this exception is this: not that the party charged, to be deprived of the benefit of its provision as a defence, must have known at the time when he contracted the second marriage, that the first wife had been alive during the seven years preceding; but that he must have been ignorant, during the whole of those seven years, that she was alive. (*Reg. v. Cullen, 9 C. & P. 681.*) If the prisoner and his first wife have been continually absent from one another for seven years next preceding the second marriage, it must then be shown that the prisoner had no knowledge of his wife's being alive at the time of the second marriage. The onus of proving the knowledge is on the prosecution and not on the prisoner. (*R. v. Curgerwen, 1 L. R. C. C. 1*; *35 L. J. M. C. 58.*) In *Reg. v. Briggs, (Dears. & B. 98*; *26 L. J. M. C. 7.*) the question had been previously raised but fell through owing to the imperfect finding of the jury; but in *Reg. v. Jones, (1 C. & M. 614.)* where the prisoner's first wife had left him for sixteen years, and it was proved by the second wife that she had known him for nine years living as a single man, and that she had never heard of the first wife, who, it appeared, had been living seventeen miles from where the prisoner resided; it was held that on this evidence the prisoner ought to be acquitted on the proviso contained in the repealed section 22 of 7 Geo. IV. c. 31; and see now *Reg. v. Curgerwen, ubi sup.* As to the presumption of death in consequence of not having been heard of for seven years, see tit. "Evidence," Vol. II.; and see *1 East, P. C. c. 12, s. 4*; *3 Inst. 88*; *Reg. v. Cullen, 9 C. & P. 681*; *R. v. Harburne, 2 A. & E. 540*; *4 N. & M. 341, S. C.*; *Read v. Morgan, 8 C. & P. 65.* The second marriage would be void, in case the former husband or wife were alive; and the parties would be subject to the censures and punishment of the ecclesiastical court, though there would be no offence within the above Act. (*4 Bla. Com. 164, n.*)

Another exception, is the case of a second marriage where the party indicted was divorced from the bond of the first marriage. A divorce *à vinculo*, for adultery, in a court in Scotland, of persons married in England, has been considered not within the 1 Jac. I. c. 11; because no sentence or act of any foreign country or state can dissolve an English marriage *à vinculo*, for grounds for which it cannot be dissolved in England. (*R. v. Lotley, R. & R. 237*; and see *Tovey v. Lindsay, 1 Dow. Rep. 117.* See *1 Russ. on Crimes, 4th ed. by Greaves, 271, n.*)

The remaining exception is the case of a second marriage where the former marriage was declared to be void by the sentence of a court of competent jurisdiction. The corresponding clause of the statute 1 Jac. I. c. 11, s. 3, was held not to extend to the sentence of an ecclesiastical court in a cause of jactitation; (*Duchess of Kingston's case*, 11 St. Tr. 260;) and even sentences within this clause of the Act may be impeached upon the part of the crown, upon the ground of fraud or collusion. (*Id.* 1 Ph. Ev. 338.)

The Indictment, and Venue.—The indictment must state the two marriages, and aver that the former consort was alive at the time of the second marriage. In the *Duchess of Kingston's case*, the first count stated generally that the defendant, on such a day, &c., being then married, and then the wife of A. J. H., with force and arms, at &c., did feloniously marry E. P. &c., the said A. J. H. being then alive, &c. The second count stated the time and place of the first as well as the second marriage. An averment of the prisoner's apprehension is necessary where the second marriage did not take place in the county where the defendant is indicted. (*R. v. Fraser*, 1 Moo. C. C. 407; *R. v. Treherne*, *id.* 298; 1 East, P. C. 469.) But the averment that the defendant is in custody in the county wherein he is tried is unnecessary; because that appears from the caption of the indictment. (*R. v. Whiley*, by all the judges, 1 C. & K. 150; see also, *R. v. Smythies*, 1 Den. C. C. 188.)

We have already noticed the provision of the 24 & 25 Vict. c. 100, s. 57, as to allowing the venue to be in the county where the offender was apprehended, or is in custody, *ante*, 450.)

As to the mode of describing the wives' names, see in general "*Indictment*," Vol. III. If there be a discrepancy between the Christian name of the prisoner's first wife, as laid in the indictment, and as stated in the copy of the certificate which is produced to prove the first marriage, the prisoner must be acquitted, unless that discrepancy can be explained, or, in the absence of such proof, unless it can be shown that the first wife was known by both names, or the indictment be amended; see *ante*, tit. "*Amendment*." (*Reg. v. Gooding*, 1 C. & M. 297.)

In *R. v. Deeley*, where the prisoner was convicted at the Old Bailey April sessions, 1831, of bigamy, on an indictment for marrying "Elizabeth Chant, widow," his former wife being alive; and it appeared in evidence that Elizabeth Chant was a *spinster*; on a case reserved, the twelve judges held the variance fatal, and the prisoner was entitled to his discharge. (*R. & M. C. C.* 303.) Now such a variance could be amended. See tit. "*Amendment*," *ante*.

Evidence.—In respect to the manner of proving the two marriages, the first must be duly established to be valid, according to the rites and customs of the country in which it was celebrated. (1 East, P. C. 469; per Bayley, J., *Smith v. Huson*, *Deleg. T.* 1811, citing a case reserved for the opinion of the judges, *K. B., M.* 1803; 1 Phil. 287.)

It will not suffice to prove a marriage by reputation in support of the indictment. (*Norris v. Miller*, 4 Burr. 2057.)

Nor will there be any presumption of a legal marriage as there is in civil cases. (*Smith v. Huson*, *supra*.)

If the marriage was celebrated in this country, it may be proved by the production of the register of the marriage, or an examined copy of it, or a copy purporting to be signed and certified as a true copy or extract by the officer, to whose custody the original is entrusted, (14 & 15 Vict. c. 99, s. 14,) together with some proof, either direct or presumptive, of the identity of the parties. (*Arch. C. L.* 15th ed. 764.) By the 6 and 7 Will. IV. c. 86, s. 38, (an Act for the Registration of Births, Marriages, and Deaths in England, and which see *post*, "*Re-*

Indictment for.

Venue.

Names of wives.

Indictment for.

Proof of the marriages.

Register.

Bigamy.

Identity.

Subscribing
witnesses.

gister,") copies of entries in registers are made evidence if sealed with the seal of the register office; and see the 3 & 4 Vict. c. 92. (*Ib.*)

The 4 Geo. IV. c. 76, s. 28, requires that marriages shall be solemnized in the presence of two or more credible witnesses besides the minister who shall celebrate the same, and the 6 & 7 Will. IV. c. 86, s. 31, (which see *post*, tit. "*Register*,") requires that it shall be registered in duplicate, according to the form in the schedule, and that each entry shall be signed by the minister and parties married, and attested by two witnesses. But upon a provision nearly similar in the former marriage act, it was held not to be necessary to call one of the subscribing witnesses to the register in order to prove the identity of the persons married, but that the register or the copy of it being produced, any evidence which satisfied the jury as to the identity of the parties was sufficient, as if their handwriting to the register were proved, or that bellringers were paid by them for ringing for the wedding, or the like. (1 *East*, P. C. c. 12, s. 11, p. 472; *Bull. N. P.* 27.) And it was held that if the marriages were proved by a person present at them, it was not necessary to prove the registration, or license, or banns: the prisoner was indicted for marrying Ann Epton, whilst Jane, his former wife, was living; each marriage was proved by a witness, who was present at the ceremony, and it appeared that at the first marriage the prisoner went by the name of Allison, and at the second, by the name of Wilkinson. *Chambre, J.*, doubted whether the evidence was sufficient without proof of the registration of either marriage, or of any licence or publication of banns, but the judges held that it was. (*Rex v. Allison, East*, T. 1806, *MS. Bailey, J.*, and *R. & R.* 109; 1 *Russ. on Crimes*, 4th ed. by *Greaves*, 317.)

Marriage under
6 & 7 Will. IV.,
c. 85.

The 6 & 7 Will. IV. c. 85, requires, that in every case of a marriage, according to the form authorized by that Act, one of the parties should give notice under his or her hand, according to a form given in that Act, to the superintendent registrar of the district, in which the parties have dwelt for not less than seven days then next preceding, the notice to state (*inter alia*) the church or other building in which the marriage is to be solemnized, and after twenty-one days after the entry of such notice, the registrar may issue a certificate in the form given in the Act, and after the expiration of the twenty-one days, the marriage may be solemnized in the registered building stated in the notice by and between the parties described in the notice and certificate, and if any persons marry in any place other than the registered building specified in the notice and certificate, or without due notice to the superintendent registrar, or without certificate of notice duly issued, the marriage, except in certain cases, is to be *null and void*. Upon an indictment for bigamy, the first marriage professed to be under that Act, and to prove its validity, the step-father of the first wife proved that he was present at it, and that notice of the marriage was duly given to the superintendent registrar, but the notice was not produced. The superintendent registrar, however, produced the register of the marriage, and the identity of the parties who signed their names was proved by the witness. The superintendent registrar also produced the register of the place where the marriage was celebrated, and the certificate he issued was produced and proved by him, and a conviction upon that evidence was held to be correct, though the notice was not produced, and there was no proof that the certificate had duly issued, or that the marriage was celebrated in the building mentioned in the notice and certificate. (*Reg. v. Hawes*, 1 *Den. C. C.* 270.)

Marriage in
Wesleyan chapel.

The presence of a registrar at the marriage, the fact of the ceremony taking place, testified by an eye witness, and the entry in the registrar's book, of which a copy was produced, afford *prima facie* evidence that the Wesleyan chapel was a duly registered place in which marriages might be legally celebrated. (*Reg. v. Manwaring, Dears. & B.* 132; 26 *L. J. M. C.* 10.) In that case it was sought to prove that the Wesleyan

chapel was duly registered by the additional evidence of a certificate under the hand of the superintendent registrar, that the Wesleyan chapel was duly registered pursuant to the 6 & 7 Will. IV. c. 85, which certificate did not purport on the face of it to be a copy or extract, but was proved to have been examined by a witness with the register book at the registrar's office, and to be correct, but with additional words at the beginning and end of the document, and it was held to be good evidence as an examined copy or extract of the registrar's book under the 14 & 15 Vict. c. 99, s. 14, by *Pollock, C. B., Willes, J., and Watson, B.*; dubitante *Wightman, J. (ibid.)*.

Where the first marriage was solemnized in a chapel, it is necessary to show either that the chapel was one in which banns had been usually published before the 26 Geo. III. c. 33, or that the chapel was built and consecrated after that Act, and before the stat. 6 Geo. IV. c. 92; proof that marriages have been solemnized there for the last twenty years is not sufficient for this purpose. (*R. v. Bowen, 2 C. & K. 227.*)

It seems no longer necessary in the case of a marriage of a minor, since the 4 Geo. IV. c. 76, to prove that the parents consented to it, the marriage being valid without such consent. It may also be observed, that by the 6 & 7 Will. IV. c. 85, s. 25, it shall not be necessary in support of such marriage to give any proof of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of any marriage.

Marriage of minors.

To prove a Jewish marriage, it is not enough to produce witnesses, who were present at the ceremony in the synagogue, but that the written contract between the parties should be produced, and the execution of it proved. (*Horn v. Noel, 1 Camp. 61.*) On the trial of a plea of coverture, Lord *Kenyon* permitted a Jewess, who had been the former wife of the supposed husband of the defendant, to give parol evidence of her own divorce in a foreign country, according to the custom of the Jews there. (*Ganer v. Lanesborough, Peake, 17*; but see *R. v. Lolley, R. & R. 237.*) It has been decided that a Jewish divorce can only be proved by producing the document of divorce delivered by the husband to the wife. (*Moss v. Smith, 1 M. & G. 228.*) See further tit. "Marriage," Vol. III.

Jewish marriage. Evidence.

Where the first marriage, which was with a Roman Catholic woman, was by a Romish priest in England, not according to the ritual of the church of England, and the ceremony was performed in Latin, but the witnesses, not understanding that language, could not swear that the ceremony of marriage according to the church of Rome was read, the defendant was acquitted. But Lord Chief Justice *Willes*, who tried him, seemed to be of opinion that a marriage by a priest of the church of Rome was a good marriage if the ceremony according to that church could be proved,—namely, the words of the contracting part of it. (*Lyon's case, Old Bailey, Dec. 1738*; 1 *East's P. C. 469*; see *Fielding's case, 14 How. St. Tr. 1328.*)

Roman Catholics.

If the marriage was celebrated abroad, it may be proved by any person who was present at it; and such circumstances should also be proved, from which the jury may presume that it was a valid marriage according to the laws of the country in which it was celebrated. Proof that the ceremony was performed by a person appearing and officiating as a priest, and that it was understood by the parties to be the marriage ceremony according to the rites and custom of the foreign country, would be sufficient presumptive evidence of it, (see *R. v. Bampton, 10 East, 282.*) so as to throw upon the defendant the onus impugning its validity. It was sought to prove a Scottish marriage by the evidence of a witness, who said she was present at a ceremony performed by a minister of a congregation, but whether of the kirk or not she did not know, in the private house of the witness in Edinburgh; that the witness herself was married in the same way; that parties always married in

Foreign marriage.

Scottish marriage.

Bigamy.

Proof of foreign law.

Scotland in private houses ; and that the prisoner and her sister lived together as man and wife ; but it was held that such evidence alone was not sufficient to justify a conviction, but that some witness conversant with the law of Scotland ought to have been called to say whether the facts given in evidence constituted a valid marriage, according to the law of that country, and, moreover, that what the witness said did not amount to any proof of a marriage in fact, even if she had been a competent witness in such a matter. (*Reg. v. Povey*, 1 *Dears. C. C.* 32 ; 22 *L. J. M. C.* 19.) The witness called to prove the foreign law of divorce must be *peritus virtute officii* or *virtute professionis*, (*Sussex Peerage case*, 11 *Cl. & Fin.* 85,) see *Arch. C. L.* 16th ed. 820 ; and as to proof of foreign laws, see tit. "*Evidence*," *post*, Vol. II. The law of France as to marriage was proved by production of a book purporting to contain the code of France, and proved by oral testimony to contain the law of France ; the book purporting to have been published at the royal printing-office, which was (according to the statement of the witness) authorized to print the laws of France by the Government. (*Lacon v. Higgins*, 3 *Stark. R.* 178.) As to foreign registers, see tit. "*Evidence*," *post*, Vol. II. ; and as to the proof of the foreign laws in general, see *ibid.*

How far the acknowledgment of the defendant is evidence.

How far the acknowledgment of the defendant upon the subject of his marriage is sufficient evidence of the fact, may admit of some doubt. In *Trueman's case* it was held, that proof of the prisoner's cohabiting with and acknowledging himself married to a former wife, then living, such assertion being backed by his producing to the witness a copy of the proceeding in a Scotch court against him and his wife for having contracted the marriage improperly (the marriage, however, being still good according to that law), was sufficient evidence of the first marriage ; and upon such evidence, together with due proof of the second marriage, the prisoner was convicted. The point being reserved for the opinion of the judges, all of them (with the exception of *Perryn*, B., and *Buller*, J., who were absent), held the conviction proper. Two of them observed that this did not rest upon cohabitation and bare acknowledgment ; for the defendant had backed his assertion by the production of the copy of the proceedings ; but some of the judges thought that the acknowledgment alone would have been sufficient, and that the paper produced in evidence was only a confirmation of such acknowledgment. (*Trueman's case*, *Nottingham Spring Ass.* 1795, 1 *East's P. C.* 470 ; see *R. v. Upton*, 1 *Russ. on Crimes*, 4th ed. 318.)

Evidence.

With respect to the admission of a bare acknowledgment in cases of this nature, Mr. *East* says (1 *P. C.* 471), it may be difficult to say that it is not evidence to go to the jury, like the acknowledgment of any other matter *in pais*, where it is made by a party to his own prejudice at the time. But it must be admitted that it may, under circumstances, be entitled to little or no weight ; for such acknowledgments, made without consideration of the consequences, and palpably for other purposes at the time, are scarcely deserving of that name, in the sense in which acknowledgments are received as evidence ; more especially if made before the second marriage, or upon occasions when, in truth, they cannot be said to be to the party's own prejudice, nor so conceived by him at the time, and it has been held by *Pollock*, C. B., that a statement by the defendant of the particulars of his first marriage is not sufficient evidence upon a trial for bigamy ; (*Reg. v. Flaherty*, 2 *C. & K.* 792 ;) such statements, if made deliberately, have been left to the jury. (*R. v. Dennis Upton*, 1 *Russ. on Crimes*, 4th ed. 318 ; *Reg. v. Newton*, 2 *M. & Rob.* 503, *S. C.* ; 1 *C. & K.* 164.)

Admissions.

First wife cannot be a witness.

The first and true wife is not to be allowed as a witness against the husband, nor *vice versa* ; but it seems clear that the second wife may be admitted to prove the second marriage, being not so much as his wife *de facto*. (1 *Hale*, 693 ; 1 *Hawk. c.* 42, s. 8 ; 4 *Blac. C.* 164 ; 1 *Phil. E.* 78 ; see tit. "*Evidence*," *post*, Vol. II.)

Where the prisoner was indicted for having married A. Walker, his

first wife, A. Armstrong, being alive ; the prisoner's first marriage with A. Armstrong was proved. The prisoner's defence was, that the first marriage was void, as A. Armstrong had a husband living at the time, and he proposed to call A. Armstrong to prove that fact ; it was objected to her competency that the fact of her marriage with the prisoner having been proved, she must be taken to be his lawful wife. *Alderson*, B., was at first inclined to think that she might be examined simply to the fact of her being the wife or not of the prisoner, but after conferring with *Williams*, J., he determined not to receive her evidence, but to reserve the point. (*Peat's case*, 2 *Lewin*, 88.) See this case commented on by *Mr. Greaves*, in his 4th edition of *Russell on Crimes*, Vol. I., p. 319, n., where he supports the learned judge's first opinion.

Commence as usual, as *ante*, p. 11.] —, on the day of , Commitment for
A. B. at the parish of in the said county, feloniously and bigamy.
unlawfully did marry and take to wife one E. F., C. B., his former wife, to whom
the said A. B. was previously married, being then alive: against the form of the
statute in that case made and provided. [Conclude as usual, as *ante*, 11.]

Commence as usual, as *ante*, p. 11.] —, for that he the said A. O., on the Commitment for
day of , in the year of our Lord 18 , at the parish of bigamy without
in the county of , did marry one G. H., spinster, and her, the jurisdiction
the said G. H., then and there had for his wife ; and that the said A. O. after where prisoner
wards, to wit, on the day of , in the year aforesaid, in the apprehended
parish aforesaid, feloniously did marry and take to wife one L. S., spinster, the within the
said G. H., his former wife, being then living, against the form of the statute in jurisdiction.
that case made and provided: the said C. D. having also made oath before me,
the said justice, that the said A. O. was apprehended and taken for the said felony,
in the parish of , in the said county of . Given under my
hand and seal, this day of , one thousand eight hundred
and .

— to wit. The jurors for our lady the Queen upon their oath present, that Indictment for
C. D., on the day of , in the year of our Lord bigamy.
at , in the county aforesaid, did marry one E. F., spinster, and her,
the said E. F., then and there had for his wife ; and that the said C. D. after-
wards, and whilst he was so married to the said E. F. as aforesaid, to wit, on the
day of , in the year aforesaid, at , in the
county of , feloniously and unlawfully did marry and take to wife one
G. H., and to her, the said G. H., was then and there married, the said E. F.,
his former wife, being then alive ; against the form of the statute in such case
made and provided, and against the peace of our said lady the Queen, her crown
and dignity. And the jurors aforesaid, upon their oath aforesaid, do further
present, that the said C. D. afterwards, to wit, on &c., was apprehended and taken
for the felony aforesaid, at the parish of , in the county of
aforesaid. [Omit this latter averment, if the second marriage took place in
the county wherein the defendant is indicted.]

1. *As to License.*

Billiards.

[8 & 9 Vict. c. 109.]

- I. *As to License*, 458.
 - II. *Offences*, 459.
 - III. *Hours and Days of Play*, 460.
 - IV. *Appeal*, 460.
 - V. *Forms*, 461.
-

Game lawful or unlawful.

THE game of Billiards was said, in *Parsons v. Alexander*, (5 E. & B. 263; 24 L. J. Q. B. 277,) by Lord Campbell, to be a lawful game; though the judgment in that case was, that betting on the game of billiards was gaming within the 8 & 9 Vict. c. 109. Money lost by such betting for which a cheque had been given could not be recovered. But it is said, in *R. v. Badford*, (*Lofft* 29), that, perhaps, it was an unlawful game within the view of the 33 Hen. VIII. c. 9, which statute prohibited (ss. 11 & 12) persons from keeping any place for hire for any unlawful game, and imposed a fine as well upon those who kept the place as those who frequented it, and (by s. 14) gave justices power to enter and arrest persons found there.

I. *As to License.*

Who to grant license.

By the 8 & 9 Vict. c. 109, an Act concerning games and wagers, it is enacted (by s. 10) "That the justices in every division, district, and place in England for which a special sessions of the justices of the peace, (called the general annual licensing meeting,) is holden annually for granting licenses to persons keeping, or being about to keep inns, alehouses, and victualling houses to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified, shall have authority at such general annual licensing meeting, or at any adjournment thereof, to grant billiard licenses to such persons as the said justices shall in their discretion deem fit and proper to keep public billiard tables and bagatelle boards, or instruments used in any game of the like kind; and at the special sessions holden for transferring licenses to keep inns, shall have authority to transfer such billiard licenses to such other persons as they in their discretion shall deem fit and proper to continue to hold the same; and who in each case shall be required to give the like notice of their intention to apply for such billiard license, and entitled to receive the like notice of the licensing days as is required in the case of persons intending to apply for a license or the transfer of a license to sell exciseable liquors by retail, to be drunk or consumed on the premises, or as near thereto as the case will allow. And every such billiard license shall be in the form given in the 3rd schedule annexed to this Act, and shall continue in force in the counties of Middlesex and Surrey from the 5th day of April, and elsewhere from the 10th day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and the clerk of the justices shall be entitled to demand and receive from every person licensed under this Act for the petty constable or other peace officer, for serving notices and other services required of him, the sum of one shilling, and for the clerk of the justices for the license the sum of five shillings; and every clerk who shall demand or receive from any person for such fees more than the said sums, being together six shillings, shall for every such offence on conviction before one justice, forfeit and pay the sum of five pounds."

Who to transfer license.

Notice of application.

Duration of license.

Service of notices.

Fees.

II. Offences.

2. Offences.

Sect. 11. "Every house, room, or place kept for public billiard playing, or where a public billiard table or bagatelle board or instrument used in any game of the like kind is kept at which persons are admitted to play, except in houses or premises specified in any license granted under the 9 Geo. IV. c. 61, hereinafter called a victualler's license, shall be licensed under this Act; and every person keeping any such public billiard table or bagatelle board or instrument used in any game of the like kind for public use without being duly licensed so to do, and not holding a victualler's license for the house or premises where such billiard table, bagatelle board, or other instrument as aforesaid is kept or used, and also every person licensed under this Act who shall not during the continuance of such billiard license, put and keep up the words 'licensed for billiards' legibly printed in some conspicuous place near the door, and on the outside of the house specified in the license, shall be liable to be proceeded against as the keeper of a common gaming house, and besides any penalty or punishment to which he may be liable if convicted of keeping a common gaming house, shall on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument as aforesaid, by his own confession, or by the oath of one or more credible witnesses before any police magistrate or any two justices of the peace, be liable to pay such penalty, not more than £10 for every day on which such billiard table, bagatelle board, or instrument as aforesaid shall be used, as shall be adjudged by the magistrate or justices before whom he shall be convicted; or, in the discretion of the magistrate or justices, may be committed to the house of correction, with or without hard labour, for any time not more than one calendar month; and on non-payment of any penalty so adjudged, and of the reasonable costs and charges of the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of the magistrate or one of the convicting justices; but no person who shall have been summarily convicted of any such offence shall be liable to be further proceeded against by indictment for the same offence."

Keeping billiard table without a license.

Not putting up "Licensed for billiards," on outside of house.

Conviction.

Distress.

Sect. 12. "Every person licensed under this Act who shall be convicted before a police magistrate or two justices, acting in and for the division or place in which shall be situated the house kept or theretofore kept by such person, of any offence against the tenor of the license to him granted, shall be liable to the same penalties and punishments in the case of a first, second, or third offence respectively to which persons licensed under the 9 Geo. IV. c. 61, are respectively liable on conviction of a first, second, or third offence against the tenor of the license granted to them under the last recited Act, or as near thereunto as the nature of the case will allow; and all the provisions of the last recited Act with respect to convictions and penalties for offences against the last recited Act, and the proceedings for enforcing the same, and to the expenses of prosecution and penalties on witnesses for not attending, and the recovery and application of penalties, and the proceedings on appeals against convictions, and the award of costs on appeals and in actions against justices, constables, or other persons, for any thing done in execution of the last recited Act, shall be deemed to apply so far as they are applicable to convictions for offences against the tenor of the licenses granted under this Act, and to the proceedings consequent thereupon, or connected therewith, as if they were herein re-enacted."

Offences against the tenor of the license.

9 Geo. IV. c. 61, applicable.

3. *Hours and Days of Play.*

Hours and days
of play.

III. *Hours and Days of Play.*

Sect. 13. "Every person keeping any public billiard table, bagatelle board, or instrument used in any game of the like kind, whether he be the holder of a victualler's license, or licensed under this Act, who shall allow any person to play at such table, board, or instrument after one and before eight o'clock of the morning of any day, or at any time on Sundays, Christmas Day, or Good Friday, or any day appointed to be kept as a public fast or thanksgiving; and every person holding a victualler's license who shall allow any person to play at such table, board, or instrument kept on the premises specified in such victualler's license at any time when such premises are not by law allowed to be open for the sale of wine, spirits, or beer, or other fermented or distilled liquors, shall be liable to the penalties herein provided in the case of persons keeping such public billiard table, bagatelle board, or instrument as aforesaid for public use without license; and during those times when play at such table, board, or instrument is not allowed by this Act, every house licensed under this Act, and every billiard room in every house specified in any victualler's license shall be closed; and the keeping of the same open or allowing any person to play therein or thereat at any of the times or on any of the days during which such play is not allowed by this Act, shall be deemed in each case an offence against the tenor of the license of the person so offending."

Power for
constables, &c.,
to enter.

Sect. 14. "It shall be lawful for all constables and officers of police to enter into any house, room, or place where any public table or board is kept for playing at billiards, bagatelle, or game of the like kind, when and so often as such constables and officers shall think proper; and every person licensed under 9 Geo. IV. c. 61, or under this Act who shall refuse to admit any such constable or officer of police into such house, room, or place, shall on conviction thereof before a police magistrate or any two justices of the peace, be deemed guilty of an offence against the tenor of his license, whether the same be a billiard license or a victualler's license, and in the case of a first, second, third, or subsequent offence, shall be punished accordingly."

IV. *Appeal.*

To next sessions.

Recognizance.

Costs.

Sect. 20. "Any person who shall be summarily convicted under this Act may appeal to the next general or quarter sessions of the peace, to be holden for the county or place wherein the cause of complaint shall have arisen, provided that such person at the time of the conviction, or within forty eight hours thereafter, shall enter into a recognizance with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal and to abide the further judgment of the court at such sessions, and to pay such costs as shall by the last mentioned court be awarded; and it shall be lawful for the magistrate or justices by whom such conviction shall have been made to bind over the witnesses, who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal; and that every such witness on producing a certificate of being so bound under the hand of the said magistrate or justices, shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place, in like manner as in cases of misdemeanour under 7 Geo. IV. c. 64; and in case the appeal shall be dismissed and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid to be ascertained by the court, shall be re-paid to the said treasurer by the appellant."

The above appeal clause does not give an appeal against a refusal by justices to grant a billiard license; nor can the 9 Geo. IV. c. 61, be so read with the above Act as to give such appeal. (*Ex parte Chamberlain, or Reg. v. J.J. of Devonshire*, 8 E. & B. 644; 4 Jur. N. S. 477.)

Sect. 25. "No information, conviction, or other proceeding before or by any justice or justices under this Act shall be quashed, or set aside, or adjudged void or insufficient for want of form, or be removed by *certiorari* into her Majesty's Court of Queen's Bench."

5. Forms.

No appeal against the refusal of a license.

Informal conviction.

V. Forms.

To the constable
county of, } Whereas it appears to me, J. P., one of the justices of our Lady the Queen, assigned to keep the peace in the said county, by the information on oath of A. B. of, in the county of, yeoman, that the house, (room or place,) known as [here insert a description of the house, room, or place, by which it may be readily known and found] is kept and used as a common gaming house within the meaning of an Act passed in the year of the reign of her Majesty, Queen Victoria, intituled, [here insert the title of this Act.]

Form of search warrant.

This is therefore, in the name of our Lady the Queen, to require you with such assistants as you may find necessary to enter into the said house, (room or place,) and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and then diligently to search for all instruments of unlawful gaming which may be therein, and to arrest, search, and bring before me, or some other of the justices of our Lady the Queen, assigned to keep the peace within the county of, as well the keepers of the same as also the persons there haunting, resorting, and playing, to be dealt with according to law, and for so doing this shall be your warrant.

J. P. (L. S.)

Given under my hand and seal at, in the county of, this day of, in the year of the reign of

At the general licensing annual meeting (or an adjournment of the general annual licensing meeting, or at a special sessions) of her Majesty's justices of the peace acting for the division [or "liberty," &c., as the case may be,] of in the county of, holden at, on the day of, in the year, for the purpose of granting billiard licenses we being of her Majesty's justices of the peace acting for the said county, [or "liberty," &c., as the case may be,] and being the majority of those assembled at the said sessions, do hereby authorize and empower A. L., now dwelling at, in the parish of, to keep a house for public billiard playing, at [here specify the house,] provided that he (or she) put and keep up the words, "licensed for billiards," legibly printed on some conspicuous place near the door, and on the outside of the said house, and do not wilfully or knowingly permit drunkenness or other disorderly conduct in the said house, and do not knowingly allow the consumption of exciseable liquors therein, by the persons resorting thereto, and do not knowingly suffer persons of notoriously bad character to assemble and meet together therein, and do not open the said house for play or allow any play therein after one and before eight o'clock in the morning, or keep it open or allow any play therein on Sundays, Christmas day, or Good Friday, or on any day appointed for a public fast or thanksgiving, but do maintain good order and rule therein. And this license shall continue in force from the day of next, until the day of then next following, and no longer.

Form of license. (8 & 9 Vict. c. 109, schedule).

Given under our hands and seals on the day and at the place first written.

J. S. (L. S.)

G. R. (L. S.)

*Bleaching
and Dyeing
Works.***Bleaching and Dyeing Works.**

[23 & 24 Vict. c. 78; 25 Vict. c. 8; 26 & 27 Vict. c. 38; 27 & 23 Vict. c. 98.]

IN order to remedy the evils of the practices of some of the occupiers of bleaching works and dyeing works to keep females, young persons, and children at work during the night, and an unreasonable number of hours during the day, which were very injurious to the health and morals of the females, young persons, and children employed therein, and to regulate the employment of such people, and to provide for the education of such children, the 23 & 24 Vict. c. 78, was passed, which recited that an Act was passed in the fourth year of the reign of his late Majesty, intituled "An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom:" And that an Act was passed in the seventh year of the reign of her present Majesty, intituled "An Act to amend the laws relating to labour in factories:" And that an Act was passed in the tenth year of the reign of her present Majesty, intituled "An Act to limit the hours of labour of young persons and females in factories:" And that an Act was passed in the fourteenth year of the reign of her present Majesty, intituled "An Act to amend the Acts relating to labour in factories:" And that an Act was passed in the seventeenth year of the reign of her present Majesty, intituled "An Act further to regulate the employment of children in factories:" And that an Act was passed in the twentieth year of the reign of her present Majesty, intituled "An Act for the further amendment of the laws relating to labour in factories:"

By 23 & 24 Vict. c. 78, s. 1. "From and after the 1st day of August, 1861, the powers and provisions of the herein-before recited Acts shall apply and be held to apply to bleaching works and dyeing works, except works in which the operation of bleaching by the open-air process is the only operation of bleaching carried on, and to the employment of females, young persons, and children in bleaching works and dyeing works, except as aforesaid, to all intents and purposes as completely and effectively as if such bleaching works and dyeing works had been mentioned and included in the provisions of the herein-before recited Acts or any of them, except as is herein-after provided: Provided, nevertheless, that until the 1st day of August, 1862, it shall be lawful to employ females above the age of eighteen years and young persons in bleaching works and dyeing works until eight of the clock at night on every working day except Saturdays, and until half-past four of the clock in the afternoon on Saturdays." But with respect to works in which the operation by bleaching by the open-air process is carried on, it is enacted by the 25 Vict. c. 8, s. 1, "That in any building, buildings, or premises, in one or more of which any process previous to packing is carried on in the occupation of bleaching, dyeing, or finishing of any yarn or cloth of cotton, silk, wool or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, including the operation of bleaching by the open-air process, as defined in the Act 23 & 24 Vict., c. 78, and in one or more of which processes steam or water or other mechanical power is used or employed, it shall not be lawful to employ females, young persons, and children, or any of them during the night—that is to say, from eight of the clock in the evening to six of the clock in the morning—excepting to recover lost time in the manner provided by the 'Bleaching and Dyeing Works Act,' 23 & 24 Vict. c. 78;" and by sect. 2, "for the due enforcement of this Act, there shall be applicable all the powers provisions, and penalties of the Act 7 & 8 Vict. c. 15."

Sect. 2. "Provided also, that after the said first day of August, one thousand eight hundred and sixty-two, it shall be lawful to employ females above the age of eighteen years and young persons in bleaching

3 & 4 Will. IV.
c. 103.

7 & 8 Vict. c. 15.

10 & 11 Vict.
c. 29.13 & 14 Vict.
c. 54.16 & 17 Vict.
c. 104.19 & 20 Vict.
c. 38.

Recited Acts to
apply to
bleaching and
dyeing works,
and to the
employment of
females, young
persons, and
children therein.

Open air process.

Females and
young persons
may be employed
until half-past
four o'clock on

works and dyeing works, in every case where the employment of such females and young persons, as regulated by the herein-before recited Acts, or any of them, or by this Act, shall have been suspended or time shall have been lost in consequence of fluctuations in trade, the nature of the process, or any other cause, in recovering time so lost, until half-past four of the clock in the afternoon on Saturdays, and until eight of the clock at night on other days : Provided that by means of such employment the whole time which such females and young persons, or any of them, shall have been employed during the then present calendar month and the then last past six calendar months, do not exceed the total number of hours which such females and young persons may lawfully be employed according to the provisions of the first section of this Act and of the provisions of the recited Acts."

Sect. 3. "It shall not be lawful in any case, after the said first day of August, one thousand eight hundred and sixty-one, to employ females and young persons or any of them in bleaching works or dyeing works, except such works as before excepted, after half-past four of the clock in the afternoon of any Saturday, or for more than nine hours on any Saturday, or for more than twelve hours on any other day."

Sect. 4. "In any bleaching works or dyeing works in which the employment of females and young persons shall have been suspended during any day or part of a day, by reason of a deficiency or excess of water in the stream which, by means of a waterwheel, should drive the machinery or part of the machinery in such works, but shall have failed so to do, it shall be lawful to employ such females and young persons in such cases during the day and the night following such day (except such day be Saturday, when they may work until six of the clock) for the same number of hours within the twenty-four consecutive hours of such day and night as such females and young persons may then otherwise be lawfully employed according to the provisions of the herein-before recited Acts or of this Act."

Sect. 5. "After the month of July, in the year one thousand eight hundred and sixty-two, the occupier of every bleaching works or dyeing works, except such works as before excepted, who shall employ females and young persons, or any of them, after half of an hour after two of the clock in the afternoon on any Saturday, or after six of the clock in the evening on any other day or days, or during the night, as herein-before provided, shall every day, except Sundays, before twelve of the clock at noon, register in a book, first approved by an inspector, in the form given in Schedule (A) to this Act annexed, in case such females and young persons, or some of them, shall severally have been employed at or during a different time or times, the time which each and every such female and young person shall severally have been employed during the working day last passed ; and in case all such females and young persons shall have been employed at one and as near as may be the same time, then such occupier shall every day, except Sundays, before twelve of the clock at noon register in a book first approved by an inspector, in the form given in Schedule (B) to this Act annexed, the longest time which any such females and young persons shall have been employed during the working day last passed ; and the time so registered shall be held to be the time which all such females and young persons were so employed in such works, unless it be proved otherwise to the satisfaction of a justice of the peace."

Sect. 6. "It shall be lawful to employ in bleaching works and dyeing works females and young persons who shall not at any time previous have been employed in any bleaching works or dyeing works, or who shall not have been employed at the same works during the calendar month then last passed for the same hours and at the same time which it may then be lawful to employ females and young persons who shall then be and have been employed at such bleaching works or dyeing works and none other during the six calendar months last passed."

Bleaching and Dyeing Works.

Saturdays and until eight o'clock on other days, but not so as to exceed in any period of six months and part of another month the total number of hours allowed by this Act, &c.

Restriction as to time females and young persons are to be employed on Saturdays, and on other days.

Females and young persons may be employed during the night in case of suspension of employment by deficiency or excess of water in the stream, Saturday night excepted.

Occupiers who employ females and young persons according to the provisions of this Act to keep registers in the form given in the schedules annexed hereto.

As to employment of females and young persons who have not been before employed in bleaching or dyeing works, &c.

Bleaching and Dyeing Works.

Interpretation of terms.

Bleaching and dyeing works.

Open air process.

Calendering and finishing works where steam, water, and mechanical power is used.

Extended to finishing where-ever carried on, and to hooking, lapping, making up and packing.

Act not to apply where only males over fourteen years employed.

Sect. 7. "In the construction of this Act the words 'bleaching works' and 'dyeing works' shall be understood respectively to mean any building, buildings, or premises in which females, young persons, and children, or any of them, are employed, and in one or more of which buildings or premises any process previous to packing is carried on in the occupation of bleaching, dyeing, or finishing of any yarn or cloth of cotton, silk, wool, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, and in one or more of which processes steam, water, or other mechanical power is used or employed; and the words 'the operation of bleaching by the open-air process' shall include every process, whether of preparing, beetling, dyeing, finishing, or otherwise, to which yarn or cloth *bond fide* bleached in the open air in fields or greens is usually and properly subjected." See the provision of the 25 Vict. c. 8, s. 1, above set out. There are processes of finishing cloth as incidental to bleaching operations and to dyeing operations, and also independently of either bleaching or dyeing. These latter processes are perching, stiffening, raising, shearing, and cutting, and are sometimes the only processes performed upon goods after they leave the manufacturer "in the grey," but sometimes the goods are afterwards sent to be dyed. It had been held that under the 23 & 24 Vict. c. 78, that where these latter processes were carried on as a separate and independent trade antecedent to bleaching and dyeing upon premises where no bleaching or dyeing was done, the premises were not within that Act; (*Howarth v. Coles*, 12 C. B. N. S. 139; 31 L. J. M. C. 262); but see (upon similar words in 8 & 9 Vict. c. 29) *Hardcastle v. Jones*, 3 B. & S. 153; 32 L. J. M. C. 49. Since the above decision, however, the 23 & 24 Vict. c. 78, has been extended to calendering and finishing works by the 26 & 27 Vict. c. 38; wherein it is enacted, by sect. 1, the words "bleaching works" and "dyeing works" in the 23 & 24 Vict. c. 78, "shall be further understood to mean any building, buildings, or premises in which females, young persons, and children are employed, and in any part of which buildings or premises any process previous to packing is carried on in the occupation of calendering or finishing of any yarn or cloth of cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, or in any process incident to such calendering or finishing, and in one or more of which processes steam, water, or other mechanical power is used or employed: Provided always that nothing in this Act contained shall extend to any building, buildings, or premises defined to be a factory by the Act 7 & 8 Vict. c. 15." And by the 27 & 28 Vict. c. 98, for the purpose of extending the above Act to the process of finishing, wheresoever carried on, whether steam, water, or mechanical power is used or not, and to the employment of women and young persons and children in the processes of hooking or lapping, or making up and packing, it is enacted: "That after the passing of that Act all such provisions of the said bleaching and dyeing works Act, 1860, as are now in force, shall apply to women, young persons and children employed for hire in any building or premises whatever in the process of finishing, hooking, or lapping, and of making up and packing any yarn or cloth of cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, or any of such processes. And in the construction of the said Bleaching Act, 1860, and in the Acts therein recited, 'bleaching works' and 'dyeing works' and 'factory' shall include any buildings or premises in which the said processes, or any of them are carried on: Provided always that this Act shall not apply to any building or premises in which all the persons employed are males over the age of fourteen years: Provided also, that in buildings and premises within this Act, the owner or owners may from time to time, by notice to be given in writing to the inspector, elect what shall be the working hours in such buildings and premises, so as that the total number of hours during which females, young persons and

children may be lawfully employed in any one day or week, according to the provisions of the 23 & 24 Vict. c. 78, be not exceeded, and so as the working hours elected be between six in the morning and six in the evening, or seven in the morning and seven in the evening, or eight in the morning and eight in the evening."

SECT. 8. "That so much of section twenty-eight of the herein-before secondly recited Act as provides that notices of all time lost which is intended to be recovered, and of all time which shall be recovered, shall be hung up in the entrance of the factory, and the whole of section thirty-three of the said Act shall not apply to the employment of females or young persons under the provisions of this Act; and that so much of section twenty-eight of the said Act as provides that notices of the times of the day and amount of time allowed for their several meals, of all time lost which is intended to be recovered, and of all time which shall be recovered, shall be hung up in the entrance of the factory, and so much of section thirty-six of the said Act as provides that during any meal time which shall form any part of the hour and a half allowed for meals no child or young person shall be employed, or allowed to remain in any room in which any manufacturing process is then carried on, and all the young persons employed in a factory shall have the time for meals at the same period of the day, shall not apply to the employment of male persons above thirteen years of age in any dyeing works, or to the employment of children or young persons during the meal time of such male persons."

SECT. 9. "Nothing in this Act contained shall extend or apply to any person in so far as they are employed in the open air, or to any building, buildings, or premises used solely for the purposes declared in the Act of the ninth year of Victoria, intituled 'An Act to regulate the labour of children, young persons, and females in print works,' or to the occupier of such building, buildings, or premises in respect thereof, or to any person or persons employed solely in the manner declared and regulated by the said Act, or to any premises, either open, enclosed, or covered, used or to be used *bonâ fide* exclusively for the purposes of carrying on the process, occupation, trade, or business of Turkey red dyeing, or to any employment necessary or incident thereto, or to the occupier of such premises in respect thereof, or to the employment upon such premises of any females, young persons, or children solely engaged or employed in any such process, occupation, trade, business, or employment." The exemption conferred by this section applies to an establishment within the description of the 8 & 9 Vict. c. 29, consisting of separate buildings or works, though not locally adjacent, in each of which certain of the processes incidental and necessary to the chief process of printing are performed, and on the whole of which combined the main business is carried on. (*Hoyle v. Oram*, 12 C. B. N. S. 124; 31 L. J. M. C. 213.) Where calico printers had two distinct works separated from one another by seven miles, in one of which the cotton cloth when received from the manufacturer was bleached, then sent to the other to be impressed with the pattern, and then sent back to the former to be dyed and finished, from whence it was returned to their warehouse for sale, a boy employed in the works where the bleaching, dyeing, and finishing was carried on was held not to come within the 23 & 24 Vict. c. 78, but to be employed in buildings forming a part of an establishment where the chief process of printing was carried on within the exemption of the 9th section, and the 8 & 9 Vict. c. 29, and a conviction under the statute was held wrong. (See also *Coles v. Dickenson*, 16 C. B. N. S. 604; 33 L. J. M. C. 235.) And a child employed in scutching or finishing in a room or shed communicating internally with other parts of a building in which the printing process was carried on is employed in print work within the 8 & 9 Vict. c. 29, whether the "finishing" was necessary or not, whether cleansing, &c., or not, and whether incidental to printing or not. (*Hardcastle v. Jones*, 3 B. & S. 153; 32 L. J. M. C. 49.)

Bleaching and Dyeing Works.

Amendment of s. 28 of 7 & 8 Vict. c. 15, as to notice of time lost intended to be recovered.

Act not to apply to premises used solely for purposes declared in 8 & 9 Vict. c. 29, regulating labour of children in print works.

What premises within this exception.

Bodies (dead), and Schools of Anatomy.

IT is clear no action lies for violating or disturbing the remains of the dead; nor is the stealing a corpse felony—a corpse being *nullius in bonis*. (3 *Inst.* 203.) But in *R. v. Lynn*, (2 *T. R.* 733; 2 *Leach*, 497,) it was determined that stealing dead bodies from a burial ground, though for the improvement of the science of anatomy, is an indictable offence as a misdemeanour, it being a practice contrary to common decency, and shocking to the general sentiments and feelings of mankind.

Stealing a body.

So if a person without the license of the proper authorities remove a corpse from the grave in which it is buried he is guilty of a misdemeanour, notwithstanding his motives may be estimable, such as those of filial affection and religious duty. (*Reg. v. Sharpe, Dears. & B.* 160; 26 *L. J. M. C.* 47.)

The indictment for the misdemeanour alleges that the defendant was wrongfully in the burial ground, and unlawfully opened a grave there, and took out and carried away a corpse buried there. As our law recognizes no property in a corpse, the protection of the grave depends upon this form of indictment; and relationship will not justify the removal of a corpse from the grave. (*Ib.*)

If the shroud, coffin, &c., be stolen, an indictment for the felony is sustainable, and the property should be laid in the representatives; (2 *East's P. C.* 652; 1 *Hale*, 515;) or if none, in the ordinary, and in case of doubt, it is best to add counts laying the property both ways. It is questionable if the apprehension by a sexton of a person in the act of stealing a dead body from the churchyard is a lawful apprehension, so as to subject such person to an indictment for cutting, &c., a sexton, in order to resist such apprehension. (*R. v. Duffin, R. & R.* 365.)

Stealing shroud, &c.

A man is bound to give Christian burial to his deceased child if he has the means of doing so; but if he has not the means he is not liable to be indicted, even though a nuisance may be created by leaving the body unburied, for which a parish officer would probably be liable under 8 & 9 *Vict. c.* 101, s. 31; for the father may not sell the body, put it into a hole, or throw it into the river. (*Reg. v. Vann, 2 Den. C. C.* 325; 21 *L. J. M. C.* 39.)

The taking away a dead body to dispose of it for gain and profit is an indictable offence. (*R. v. Gillies, R. & R.* 366, n.) To sell a dead body of a capital convict for dissection, where dissection is no part of the sentence, is a misdemeanour, indictable at common law. (*R. v. Cundick, D. & R. N. P. C.* 13; *R. & R.* 366, n.) An indictment charging that one E. L. was executed, and that the defendant was retained and employed by the gaoler for certain reward to bury the body, and that in pursuance of such retainer it became his duty to bury the body, but that he did not, nor would bury the body, but on the contrary thereof, for the sake of lucre and gain, sold it for the purpose of being dissected, is good; and to support such an indictment it is not necessary to give *direct* evidence that the defendant sold the body for the purpose of being dissected. (*Id.* See the 2 & 3 *Will. IV. c.* 75, *post*, 468.)

Selling bodies.

A conspiracy to prevent a burial is indictable as a misdemeanour. (*Young's case, 2 T. R.* 734. See *post*, "Conspiracy.")

Preventing a burial.

An indictment for wilfully obstructing W. C., clerk, in reading the service of the burial of the dead, in the parish church of A., and by threats and menaces hindering the burial, must state that W. C. was a clerk in holy orders, or that he had a right to bury the corpse, and must also set out the threats and menaces. (*R. v. Cheere, 7 D. & R.* 461.) As to burials in general, see *post*, "Church."

*Bodies
(dead), &c.*

Arresting a dead
body.

A vulgar and erroneous notion once prevailed, that a dead body might be arrested for debt. (*Lindwood*, 278, and *Wood. Cr. Law*, 143.) But such a proceeding is clearly illegal and indictable.

In the case of *Quick v. Copleton*, (1 *Lev.* 161; 1 *Sid.* 242,) a case of *Weeks v. Copleston*, (1 *Keb.* 866,) was quoted where a woman who feared the dead body of her son would be arrested for debt, was holden liable on a promise to pay in consideration of forbearance, though she was neither executrix nor administratrix. But Lord *Ellenborough*, C. J., in *Jones v. Ashburnham*, (4 *East*, 460,) denied the correctness of such a decision, and said, "It is impossible to contend that this last forbearance could be a good consideration for an *assumpsit*; for to seize a dead body upon any such pretence would be *contra bonos mores*, and an extortion on the relatives. It is contrary to every principle of law and moral feeling. Such an act is revolting to humanity, and illegal; and therefore any promise extorted by the fear of it could never be valid in law. It might as well be said, that a promise in consideration that one would withdraw a pistol from another's breast could be enforced against the party acting under such unlawful terror."

Gaoler refusing
to deliver up a
dead body.

And where upon request by the executors a gaoler refused to deliver up to them for interment the body of a debtor in execution who had died in gaol, until the amount of certain detainers was paid, the court directed a mandamus to issue peremptory in the first instance, commanding him to deliver it up; (*Reg. v. Scott*, 2 *Q. B.* 248;) and see the form of an indictment against the gaoler for such a refusal. (*R. v. Scott*, 2 *Q. B.* 248, *n.*)

Under the
Burial Acts.

Under the Burial Acts Amendment Act (20 & 21 Vict. c. 81, s. 25) it is made an offence punishable on summary conviction to remove any body, which has been interred in any place of burial, without the license of a secretary of state. See for the enactment in full, *post*, tit. "*Burials*."

Bodies cast on
shore.

As to the burial of dead bodies cast on shore, see *post*, "*Dead bodies cast on shore*."

Felo de se.

As to the burial of a *felo de se*, see *post*, "*Felo de se*," Vol. II.

Schools of
anatomy, &c.

By the 2 & 3 Will. IV. c. 75, intituled "An Act for regulating Schools of Anatomy," reciting, "Whereas a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of treating and curing such diseases, and of healing and repairing divers wounds and injuries to which the human frame is liable, cannot be acquired without the aid of anatomical examination; and whereas the legal supply of human bodies for such anatomical examination is insufficient fully to provide the means of such knowledge; and whereas, in order further to supply human bodies for such purposes, divers great and grievous crimes have been committed, and lately murder, for the single object of selling for such purposes the bodies of the persons so murdered; and whereas, therefore, it is highly expedient to give protection under certain regulations, to the study and practice of anatomy, and to prevent as far as may be, such great and grievous crimes and murder as aforesaid;" it is enacted, "That it shall be lawful for his Majesty's principal secretary of state for the time being for the home department in that part of the United Kingdom called Great Britain, and for the chief secretary for Ireland in that part of the United Kingdom called Ireland, immediately on the passing of this Act, or so soon thereafter as may be required, to grant a license to practice anatomy to any fellow or member of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine in any part of the United Kingdom, or to any professor or teacher of anatomy, medicine, or surgery, or to any student attending any school of anatomy, on application from such party for such purpose, countersigned by two of his Majesty's justices of the peace acting for the county, city, borough, or place wherein such party resides, certifying

Secretary of state
to grant licenses
to practise
anatomy.

that, to their knowledge or belief, such party so applying is about to carry on the practice of anatomy."

Sect. 2. "It shall be lawful for his Majesty's said principal secretary of state or chief secretary, as the case may be, immediately on the passing of this Act, or as soon thereafter as may be necessary, to appoint respectively not fewer than three persons to be inspectors of places where anatomy is carried on, and at any time after such first appointment to appoint, if they shall see fit, one or more other person or persons to be an inspector or inspectors as aforesaid; and every such inspector shall continue in office for one year, or until he be removed by the said secretary of state or chief secretary, as the case may be, or until some other person shall be appointed in his place; and as often as any inspector appointed as aforesaid shall die, or shall be removed from his said office, or shall refuse or become unable to act, it shall be lawful for the said secretary of state or chief secretary, as the case may be, to appoint another person to be inspector in his room."

Sect. 3. "It shall be lawful for the said secretary of state, or chief secretary, as the case may be, to direct what district of town or country, or of both, and what places where anatomy is carried on, situate within such district, every such inspector shall be appointed to superintend, and in what manner every such inspector shall transact the duties of his office."

Sect. 4. "Every inspector to be appointed by virtue of this Act shall make a quarterly return to the said secretary of state or chief secretary, as the case may be, of every deceased person's body that during the preceding quarter has been removed for anatomical examination to every separate place in his district where anatomy is carried on, distinguishing the sex, and, as far as is known at the time, the name and age of each person whose body was so removed as aforesaid."

Sect. 5. "It shall be lawful for every such inspector to visit and inspect at any time, any place within his district, notice of which place has been given, as is hereinafter directed, that it is intended there to practise anatomy."

Sect. 6. "It shall be lawful for his Majesty to grant to every such inspector such an annual salary, not exceeding one hundred pounds for his trouble, and to allow such a sum of money for the expenses of his office as may appear reasonable; such salaries and allowances to be charged on the consolidated fund of the United Kingdom, and to be payable quarterly; and that an annual return of all such salaries and allowances shall be made to parliament."

Sect. 7. "It shall be lawful for any executor or other party, having lawful possession of the body of any deceased person, and not being an undertaker or other party intrusted with the body for the purpose only of interment, to permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination."

The master of a workhouse has the lawful possession of the bodies of deceased paupers within the seventh section; and where, for the purpose of preventing the relatives of such deceased persons from requiring that the body should be buried without anatomical examination, he caused their bodies to be shown to their relatives in coffins, and every appearance of a regular funeral to be gone through, when, in reality, just before the funeral left the workhouse, other coffins were substituted for those which the relatives had seen, and the bodies were in the evening taken to an hospital for dissection, all the necessary formalities required by the Act as to notices, certificates, &c., being complied with, and he received sums

Bodies (dead), &c.

Secretary of state to appoint inspectors of schools of anatomy,

and to direct what district every inspector shall superintend.

Inspectors to make returns of subjects removed for anatomical examination;

and to inspect places where anatomy is practised.

Salaries to inspectors.

Persons having lawful custody of bodies may permit them to undergo anatomical examination in certain cases.

Master of workhouse has lawful custody of deceased paupers.

Bodies
(dead), &c.

Provision in case
of persons
directing
anatomical
examinations
after their death.

The body not to
be removed from
the place where
such person may
have died
without a
certificate.

Professors,
surgeons, and
others may
receive bodies for
anatomical
examination.

Such persons to
receive with the
body a certificate
as aforesaid,
which shall be
transmitted to
the inspector.

of money from the hospital for his trouble in contravention of the 7 & 8 Vict. c. 101, s. 31: it was held, that though the master had acted a lie and been guilty of a fraud to prevent the requirement being made under the section, yet as the relatives did not in fact require the bodies to be buried without dissection, he was not guilty of an offence against this section of the statute. (*Reg. v. Feist, D. & B. C. C.* 590; 27 *L. J. M. C.* 164.)

Sect. 8. "If any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this Act authorized to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, and, in case of any such nomination as aforesaid, shall request and permit any party so authorized and nominated as aforesaid to make such examination, unless the deceased person's surviving husband or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination."

Sect. 9. "In no case shall the body of any person be removed for anatomical examination from any place where such person may have died, until after forty-eight hours from the time of such person's decease, nor until after twenty-four hours' notice, to be reckoned from the time of such decease, to the inspector of the district, of the intended removal of the body, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary, residing at or near the place of death, nor unless a certificate stating in what manner such person came by his death shall, previously to the removal of the body, have been signed by the physician, surgeon, or apothecary who attended such person during the illness whereof he died, or if no such medical man attended such person during such illness, then by some physician, surgeon, or apothecary who shall be called in after the death of such person to view his body, and who shall state the manner or cause of death according to the best of his knowledge and belief, but who shall not be concerned in examining the body after removal; and that in case of such removal, such certificate shall be delivered, together with the body, to the party receiving the same for anatomical examination."

Sect. 10. "It shall be lawful for any member or fellow of any college of physicians or surgeons, or any graduate or licentiate in medicine, or any person lawfully qualified to practise medicine in any part of the United Kingdom, or any professor, teacher, or student of anatomy, medicine, or surgery, having a license from his Majesty's principal secretary of state or chief secretary as aforesaid, to receive or possess for anatomical examination, or to examine anatomically, the body of any person deceased, if permitted or directed so to do by a party who had at the time of giving such permission or direction lawful possession of the body, and who had power, in pursuance of the provisions of this Act, to permit or cause the body to be so examined, and provided such certificate as aforesaid were delivered by such party together with the body."

Sect. 11. "Every party so receiving a body for anatomical examination after removal, shall demand and receive, together with the body, a certificate as aforesaid, and shall within twenty-four hours next after such removal, transmit to the inspector of the district such certificate, and also a return stating at what day and hour, and from whom the body was received, the date and place of death, the sex, and (as far as is known at the time) the Christian and surname, age, and last place of abode of such person, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place to which the body is removed, and shall enter or cause to be entered the

aforesaid particulars relating thereto, and a copy of the certificate be received therewith, in a book to be kept by him for that purpose, and shall produce such book whenever required so to do by any inspector so appointed as aforesaid."

Sect. 12. "It shall not be lawful for any party to carry on or teach anatomy at any place, or at any place to receive or possess for anatomical examination, or examine anatomically, any deceased person's body after removal of the same, unless such party, or the owner or occupier of such place, or some party by this Act authorized to examine bodies anatomically, shall, at least one week before the first receipt or possession of a body for such purpose at such place, have given notice to the said secretary of state or chief secretary, as the case may be, of the place where it is intended to practise anatomy."

Sect. 13. "Provided every such body so removed as aforesaid for the purpose of examination, shall before such removal, be placed in a decent coffin or shell, and be removed therein; and that the party removing the same, or causing the same to be removed as aforesaid, shall make provision that such body, after undergoing anatomical examination, be decently interred in consecrated ground, or in some public burial ground in use for persons of that religious persuasion to which the person whose body was so removed belonged; and that a certificate of the interment of such body shall be transmitted to the inspector of the district within six weeks after the day on which such body was received as aforesaid."

Sect. 14. "No member or fellow of any college of physicians or surgeons, nor any graduate or licentiate in medicine, nor any person lawfully qualified to practise medicine in any part of the United Kingdom, nor any professor, teacher, or student of anatomy, medicine, or surgery, having a license from his Majesty's principal secretary of state or chief secretary as aforesaid, shall be liable to any prosecution, penalty, forfeiture, or punishment for receiving or having in his possession for anatomical examination, or for examining anatomically, any dead human body, according to the provisions of this Act."

Sect. 15. "Nothing in this Act contained shall be construed to extend to or to prohibit any *post-mortem* examination of any human body required or directed to be made by any competent legal authority."

Sect. 16 is repealed by 24 & 25 Vict. c. 95.

Sect. 17. "If any action or suit shall be commenced or brought against any person for anything done in pursuance of this Act, the same shall be commenced within six calendar months next after the cause of action accrued; and the defendant in every such action or suit may, at his election, plead the matter specially, or the general issue not guilty, and give this Act and the special matter in evidence at any trial to be had thereupon."

Sect. 18. "Any person offending against the provisions of this Act in England or Ireland shall be deemed and taken to be guilty of a misdemeanour, and, being duly convicted thereof, shall be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding fifty pounds, at the discretion of the court before which he shall be tried; and any person offending against the provisions of this Act in Scotland shall, upon being duly convicted of such offence, be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding fifty pounds, at the discretion of the court before which he shall be tried."

Sect. 19. "And in order to remove doubts as to the meaning of certain words in this Act, be it enacted that the words 'person' and 'party' shall be respectively deemed to include any number of persons, or any society, whether by charter or otherwise, and that the meaning of the aforesaid words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only."

*Bodies (dead), &c.**

Notice to be given to secretary of state of places where anatomy is about to be practised.

How bodies are to be removed for examination.

Provision for interment.

Persons described in this Act not to be liable to punishment for having in their possession human bodies.

Act not to prohibit *post-mortem* examinations.

Limitation of actions.

Offences against this Act.

Interpretation of certain words in this Act.

Bread.

Indictment for digging up and carrying away a dead body out of a churchyard.

, } The jurors of our Lady the Queen upon their oath present, that C. D. to wit, } of , labourer, on the day of , in the year of our Lord , at the parish of in the county of the churchyard of and belonging to the parish church of the same parish there situate, unlawfully and wilfully did break and enter, and the grave there in which one A. B. deceased, had lately before then been interred and then was, then and there unlawfully, wilfully, and indecently did dig open, and afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, the body of the said A. B. out of the grave aforesaid, unlawfully, wilfully, and indecently did take and carry away, to the great indecency of Christian burial, to the evil example of all others, and against the peace of our Lady the Queen, her crown and dignity. [Add other counts as the case may require. See a form for breaking open a grave in the burial ground of a dissenting congregation, *Reg. v. Sharpe*, D. & B. 160; 26 L. J. M. C. 47; see a form of indictment against a father for refusing to bury his dead child, *Reg. v. Vann*, 2 Den. C. C. 325; see a form of indictment against a gaoler for refusing to deliver up a dead body, 2 Q. B. 248, n.]

Bread.

I. *Baking Bread in London, or within Ten Miles of the Royal Exchange*, 473.

[3 Geo. IV. c. cvi.]

II. *Baking Bread out of London, or Liberties thereof, and beyond the Weekly Bills of Mortality, and Ten Miles of the Royal Exchange, where an Assize is set*, 485.

[6 & 7 Will. IV. c. 37.]

Misdemeanour at common law.

IT is a misdemeanour at common law knowingly to give any person food injurious to eat, whether the offence be excited by malice or a desire of gain; nor is it necessary that the offender should be a public contractor, or the injury done to the public service, to render him criminally liable. (2 *East*, P. C. 822; *Reg. v. Mackarty*, 6 *East*, 133.)

A baker who sells bread containing pernicious ingredients and unwholesome materials, or even alum in a shape which renders it noxious, is guilty of an indictable offence; although a small quantity of alum may be swallowed without injury, yet if taken in larger quantities, it deranges the stomach, and occasions constipation of the bowels, and so its tendency is injurious to health, and it is unfit for the food of man. (*R. v. Trew*, 2 *East* P. C. 821; *R. v. Dixon*, 3 M. & S. 11; 4 *Cump.* 12.)

But an indictment will not lie against a miller for receiving good barley to grind, and delivering a mixture of oat and barley in return, which is unwholesome and musty, not alleging that it was intended for and unfit for the food of man. (*R. v. Haynes*, 4 M. & S. 214.)

It is not necessary that an indictment for such offence should set forth the materials which rendered the composition noxious, (*R. v. Dixon*, 3 M. & S. 16), or to state that the defendant intended to injure the parties for whom the stuff was designed. (*Id.* See form of indictment, 2 *Chit. C. L.* 556, 557.)

Summary offence by statute.

So also it is an offence punishable by summary conviction to sell, as pure and unadulterated, any article of food which is impure or adulterated. (23 & 24 Vict. c. 14. See tit. "*Adulteration of Articles of Food or Drink*," ante, p. 52.)

Bakehouses.

As to regulations respecting the conduct of bakehouses, see tit. "*Bakehouses*," ante, p. 383.

I. Baking Bread in London, or within Ten Miles of the Royal Exchange. (a)

1. In
London, &c.

The statute 3 Geo. IV., c. cvi., after reciting statute 55 Geo. III. c. 99, 59 Geo. III. c. 127, 60 Geo. III. c. 1, and 1 Geo. IV. c. 4 (b), and that it is expedient that the said recited Acts of the 59 & 60 Geo. III., and of 1 Geo. IV., should be continued until 29th Sept., 1822; and that after the said 29th Sept., the said recited Act of the 55 Geo. III., and the several provisions therein contained, (except so much thereof as repeals any former Act or Acts,) should be altogether repealed; and that in lieu of the several provisions and penalties contained in that Act, and in the said recited Act of 59 Geo. III., the regulations, provisions, and penalties hereinafter contained shall be substituted: enacts, "That the said recited Acts of the fifty-ninth and sixtieth years of the reign of his said late Majesty, and of the first year of the reign of his present Majesty, and the several clauses and provisions therein contained, shall be and the same are hereby continued; and shall remain and continue in force until the said 29th day of September next; and that from and after the said 29th day of September, the said recited Act of the 55th year of the reign of his said late Majesty, and all and every the provisions therein contained, (except so much thereof as repeals any former Act or Acts,) shall be and the same are hereby repealed."

8 Geo. IV. c. cvi.
Repeal of Acts.

Sect. 2. "It shall and may be lawful for the several bakers or sellers of bread within the city of London and the liberties thereof, within the Weekly Bills of Mortality, and within ten miles of the Royal Exchange, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour, or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barn, leven, potatoe, or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained."

What articles
bread to be made
of.

Sect. 3. "It shall and may be lawful for the several bakers or sellers of bread within the limits aforesaid, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit; any law or usage to the contrary notwithstanding."

Bakers may make
it of any weight
or size (c).

Sect. 4. "All bread sold within the limits aforesaid, shall be sold by the several bakers or sellers of bread respectively within the said limits by weight; and in case any baker or seller of bread within the limits aforesaid shall sell, or cause to be sold, bread in any other manner than by weight, then and in such case every such baker or seller of bread shall, for every such offence, forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct: provided always, that nothing in this Act contained shall extend or be construed to extend to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same."

Bread to be sold
by weight only.

Proviso for
French, &c.,
bread or rolls.

As to what is a selling by denomination and not by weight, see the

(a) This is, in many respects, a local Act, but one which concerns so great a portion of the magistracy, that it is thought advisable to insert it.

(b) All these Acts are local.

(c) In 4 M. & S. 214, it was held not an indictable offence to sell bread of short weight to the poor.

1. In
London, &c.

construction put upon the corresponding section of the 6 & 7 Will. IV. c. 37, *post*, 486, in *Huxtable v. Jones*, 2 L. R. Q. B. 460; 36 L. J. M. C. 122.

Avoirdupois
weight to be
used.

Sect. 5. "The several bakers or sellers of bread respectively within the said limits, in the sale of bread, shall use the avoirdupois weight of sixteen ounces to the pound, according to the standard in the exchequer, and the several gradations of the same for any less quantity than a pound; and in case any such baker or seller of bread shall at any time use any other than the avoirdupois weight, and the several gradations of the same, he, she, or they shall, for every such offence, forfeit and pay any sum not exceeding five pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Selling bread not
previously
weighed.

Sect. 7. "In case any such baker or seller of bread shall at any time before the expiration of two years from the commencement of this Act, sell or deliver in his, her, or their shop, house, or premises, any bread which shall not have been previously weighed in the presence of the party purchasing the same, whether required by the purchaser so to do or not, except as aforesaid, then and in every such case every such baker or seller of bread so offending, shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every such offence any sum not exceeding the sum of ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Bakers to provide
in their shops
beams, scales,
and weights, &c.,
and to weigh
bread, &c.

Sect. 8 enacts, "That every baker or seller of bread within the limits aforesaid, shall cause to be fixed in some conspicuous part of his, her, or their shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight not being of the weight it purports to be, according to the standard in the exchequer, then and in every such case, he, she, or they shall, for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct."

False weights.

Bakers, &c.,
delivering by
cart, &c., to
provide scales,
weights, &c.

Sect. 9. "Every baker or seller of bread within the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in any cart or other carriage drawn by a horse, mule, or ass, shall be provided with, and shall constantly carry in such cart or other carriage, a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant, or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread, without being provided with such beam and scales with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same; then and in every such case every such baker or seller of bread shall, for every such offence, forfeit and pay any sum not exceeding five pounds, which the magistrate or

magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct."

As to the construction put upon sect. 7 of the 6 & 7 Will. IV. c. 37, in *Reg. v. Kingsley*, 16 L. T. 48, see *post*, p. 487.

Sect. 10 enacts, "That no baker, or other person or persons who shall make bread for sale within the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale within such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant, or other person, who shall offend in the premises, and shall be convicted of any such offence, by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit and pay any sum not exceeding ten pounds nor less than five pounds, or in default thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of London, or the liberty of Westminster, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered."

Sect. 11. "If any person within the limits aforesaid shall put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale within such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever, not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall within the limits aforesaid knowingly sell, or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain, as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale; then and in every such case every person so offending shall, upon conviction before any one or more magistrate or magistrates, justice or justices of the city, county, borough or place where such offence shall have been committed, on the oath, or in the case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit and pay for every such offence any sum not exceeding twenty pounds, nor less than five pounds, which such magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order."

Sect. 12. "Every person who shall make for sale, or sell or expose for sale, within the limits aforesaid, any bread, made wholly or partially of the meal or flour of any other sort of corn or grain than wheat, or of the meal or flour of any peas or beans, shall cause all such bread to be marked with a large Roman M; and if any person shall at any time

1. In
London, &c.

Bread not to be
adulterated.

Commitment (a).

Names of
offenders to be
published.

Adulterating
corn, &c. Selling
flour of one sort
of corn as flour of
any other sort.

Bread made of
mixed meal or
flour to be
marked with a
Roman M.

(a) See in general, *post*, "Commitment in Execution."

1. *In*
London, &c.

Magistrates, &c.,
may search
baker's premises,
and if adul-
terated flour, &c.,
found, the same
may be seized
and disposed of,
&c.

within the limits aforesaid, make or sell, or expose for sale, any such bread without such mark as herein-before directed, then and in every such case every person so offending shall, upon conviction in manner herein-after mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity, which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Sect. 13. "It shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers, authorized by warrant (a) under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, (and which warrant any such magistrate or magistrates, justice or justices, is and are hereby empowered to grant,) at seasonable times in the day-time, to enter into any house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, or ground, of or belonging to any miller, mealman or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, within the limits aforesaid, and to search or examine whether any mixture or ingredient not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated; or whether any mixture or ingredient, other than is allowed by this Act, shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search it shall appear that any such meal, flour, dough, or bread, so found, shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredients shall be found which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread; then and in every such case, it shall be lawful for every such magistrate or magistrates, justice or justices of the peace, or officer or officers authorized as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread, which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used or intended to be used in or for any such adulteration as aforesaid; and such part thereof as shall be seized by any peace officer or officers authorized as aforesaid, shall with all convenient speed after seizure be carried to the nearest resident magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall make any such seizure in pursuance of this Act, or to whom any thing so seized under the authority of this Act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein, other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour or bread; then and in any such case, every such magistrate or magistrates, justice or justices of the peace, is hereby required, within the limits of their respective jurisdictions, to dispose of

(a) See "Warrant," Vol. V.

the same as he or they, in his or their discretion, shall from time to time think proper."

Sect. 14. "Every miller, mealman, or baker, within the limits aforesaid, in whose house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, ground, or possession, any ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall on being convicted of any such offence, either by his, her, or their own confession, or by the oath, or in the case of a Quaker by affirmation, of one or more credible witness or witnesses, forfeit and pay, on every such conviction, any sum of money not exceeding ten pounds nor less than forty shillings for the first offence; five pounds for the second offence, and ten pounds for every subsequent offence; or in default of payment thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, (unless the penalty be sooner paid,) as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of London, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid or recovered."

Sect. 15. "If any person or persons shall wilfully obstruct or hinder any such search as herein-before is authorized to be made, or the seizure of any meal, flour, dough or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread, which shall be seized as being adulterated, or as not being made pursuant to this Act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding ten pounds, as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order: provided also, that if any person making, or who shall make bread for sale within the limits aforesaid, shall at any time make complaint to any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, and make appear to him or them, by the oath, or in the case of a Quaker by affirmation, of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this Act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under such person so making complaint, then and in any such case, any such magistrate or magistrates, justice or justices, may and is or are hereby required to issue out his or their warrant, under his or their hand and seal, or respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found, and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within his or their respective jurisdiction,

1. *In London, &c.*

Persons in whose premises ingredients for adulteration of meal or bread found, punishable.

Names of offenders to be published.

Obstructing search.

Offences occasioned by wilful default of journeymen and servants.

Proceedings for.

1. *In
London, &c.*

is and are hereby authorized and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such complaint, then any such magistrate or magistrates, justice or justices, is and are hereby directed and authorized by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant, and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, is or are hereby authorized and required by warrant under his or their hand and seal, or hands and seals, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place, in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding six calendar months from the time of such commitment, as to such magistrate or magistrates, justice or justices shall seem reasonable, unless payment shall be made of the money ordered after such commitment, and before the expiration of the said term of six months."

Imprisonment. (a)

Bakers not to
bake bread, &c.,
on Sunday: nor
sell bread, nor
make pies, &c.,
except between
certain hours.

Sect. 16. "No master, mistress, journeyman or other person respectively, exercised or employed in the trade or calling of a baker within the limits aforesaid, shall, on the Lord's Day, or on any part thereof, make or bake any bread, rolls or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart or victuals, except as hereinafter is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last-mentioned regulations, or any one or more of them, or making any sale or delivery hereby allowed otherwise than within the bakehouse or shop, and being thereof convicted before any justice of the peace of the city, county or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more credible witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty and punishment hereinafter mentioned; (that is to say), for the first offence the penalty of ten shillings; for the second offence the penalty of twenty shillings; and for the third and every subsequent offence respectively the penalty of forty shillings; and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings *per diem*, and to be paid to the prosecutor or prosecutors for his, her, and their

(a) See in general, *post*, "Commitment in Execution."

own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders; and in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a first offence for the space of seven days, for a second offence for the space of fourteen days, and on a third or any subsequent offence for the space of one month, unless the whole of the penalty, costs and expenses be sooner paid and discharged; provided nevertheless, that it shall be lawful for every master or mistress baker, residing within the limits aforesaid, to deliver to his or her customers, on the Lord's Day, any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this Act contained."

Sect. 17. "No person who shall follow or be concerned in the business of a miller, mealman or baker, shall be capable of acting or shall be allowed to act as a justice of the peace under this Act, or in putting in execution any of the powers in or by this Act granted; and if any miller, mealman or baker, shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of £100 to any person or persons who will inform or sue for the same, to be recovered, together with full costs of suit in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint or information, wherein no essoign, wager of law, or more than one imparlance shall be allowed."

Sect. 18. "In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act, every such person offending therein shall for every such offence forfeit any sum not exceeding ten pounds, at the discretion of the magistrate or magistrates, justice or justices of the peace, before whom he or she shall be convicted of such offence."

Sect. 19. "All penalties, forfeitures and fines by this Act inflicted or authorized to be imposed, (the manner of levying and recovering and applying whereof is not herein otherwise directed,) shall upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county or place where the offence shall have been committed, (as the case may require,) either by the confession of the party offending, or by the oath (or in case of a Quaker on affirmation) of any credible witness or witnesses, (which oath or affirmation every such magistrate or justice is in every such case hereby fully authorized to administer,) be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice (which warrant such magistrate or justice is hereby empowered and required to grant); and the overplus, (if any,) after such penalties, forfeitures and fines, and the charges of such distress and sale, are deducted, shall be returned upon demand unto the owner or owners of such goods and chattels; and in case such fines, penalties and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate or justice to order the offender or offenders so convicted to be detained and kept in safe

1. In
London, &c.

Distress. (a)

Imprisonment (b).

Bakings may be
delivered till
half-past one on
Sundays.

Miller, baker,
&c., not to act as
a justice in
execution of Act.

Opposing
execution of Act.

Recovery and
application of
penalties and
forfeitures,

Distress (c).

(a) See *post*, "Warrant," Vol. V.
(b) See in general, *post*, "Commit-

ment in Execution."

(c) See *post*, "Warrant," Vol. V.

1. *In
London, &c.*

custody, until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security to the satisfaction of such magistrate or justice, for his or their appearance before such magistrate or justice on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said magistrate or justice is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorized and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month, (save and except as herein otherwise directed,) unless such penalties, forfeitures and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures and fines respectively, when paid or levied, if not otherwise directed to be applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the churchwardens or overseers of the poor of the parish or place in which such offence shall have been committed, to be by them applied and disposed for the benefit of the poor thereof."

Imprisonment (a).

Form of
summons.

Sect. 20. "Every summons to be served on every offender against any of the provisions of this Act, shall be in the form or to the effect following:—

‘To A. B. of

‘County of } WHEREAS complaint and information hath been made before
 } me C. C. one of her Majesty’s justices of the peace or magistrate for
 } the said [county, &c.] by E. F. of , that, &c. [here state
to wit. the nature and circumstances of the case, as far as it shall be necessary to show
the offence, and to bring it within the authority of the justice or magistrate,
and in doing that follow the words of the Act as near as may be]: These are
therefore to require you personally to appear before me [or such other justice or
magistrate as shall be then and there present] at in the said [county, &c.]
on the day of next, at the hour of , in the
noon, to answer to the said complaint and information made by the said E. F.,
who is likewise directed to be then and there present to make good the same.
Herein fail not. Given under my hand this day of .”

Form of
information.

Sect. 21. "Every information to be laid before any justice or magistrate for any offence against this Act, shall be in the form [and to the effect following:—

‘County of } BE it remembered, that on the day of ,
 } A. B. of in the said county, informeth me,
to wit. } one of her Majesty’s justices of the peace [or “magistrate,” as the
case may be] for the said county, that of , in the said county,
[here describe the offence, with the time and place, and follow the words of
the Act as near as may be,] contrary to the statute made in the third year of the
reign of King George the Fourth, intituled ‘An Act to repeal the Acts now in
force relating to bread to be sold in the city of London and the liberties thereof,
and within the Weekly Bills of Mortality and ten miles of the Royal Exchange;
and to provide other regulations for the making and sale of bread and preventing
the adulteration of meal, flour, and bread within the limits aforesaid,’ which hath
imposed a forfeiture of for the said offence. Taken the day
of , before me A. B.”

Sect. 22. "All offences committed against this Act shall be laid before the magistrate or magistrates, justice or justices, usually acting in and

(a) See in general, *post*, “Commitment in Execution.”

for the district in which the offence shall have been committed, in a summary way upon complaint, and the said magistrate or magistrates, justice or justices, is and are hereby empowered to issue his or their summons for the purpose of hearing and determining the same."

Sect. 23. "If it shall be made appear by the oath or affirmation of any credible person or persons to the satisfaction of any magistrate or magistrates, justice or justices, that any person or persons within the jurisdiction of any such magistrate or magistrates, justice or justices, is or are likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this Act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or magistrates, justice or justices, to be examined and give his, her, or their evidence concerning the premises, every such magistrate or magistrates, justice or justices, is and are hereby authorized and required to issue his or their summons to convene every such person or persons before any such magistrate or magistrates, justice or justices, at such reasonable time as in such summons shall be fixed ; and if any person so summoned, after having been paid or tendered a reasonable sum for his, her, or their costs and expenses, shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been duly served upon the party or parties so summoned) every such magistrate and magistrates, justice and justices, is and are hereby authorized and required to issue his or their warrant under his hand and seal or their hands and seals, to bring every such person or persons before any such magistrate or magistrates, justice or justices ; and on the appearance of any such person before any such magistrate or magistrates, justice or justices, every such magistrate or magistrates, justice or justices, is and are hereby authorized and empowered to examine upon oath or affirmation every such person ; and if any such person on his or her appearance, or on being brought before any such magistrate or magistrates, justice or justices, shall refuse to be examined upon oath or affirmation concerning the premises without offering any just excuse for such refusal, any such magistrate or magistrates, justice or justices, within the limits of his or their jurisdiction, may by warrant under his hand and seal or their hands and seals commit any person or persons so refusing to be examined to the public prison of the city, county, division, liberty or place in which such person or persons so refusing to be examined shall be, there to remain for any time not exceeding fourteen days, as any such magistrate or magistrates, justice or justices, shall direct."

Sect. 24. "If any person who shall take any oath or make any affirmation by this Act directed to be taken or made, shall wilfully forswear himself or herself, or make any false affirmation, every such person shall be subject and liable to be prosecuted for perjury by indictment or information according to due course of law; and if convicted thereof, shall be subject and liable to the pains and penalties which persons convicted of wilful and corrupt perjury are subject and liable to."

Sect. 25. "The magistrate or magistrates, justice or justices, before whom any person shall be convicted in manner prescribed by this Act, shall cause every such conviction to be drawn up in the form or to the effect following; (that is to say,)

‘ *BE it remembered, that on this day of , in the*
to wit. } year of the reign of , A. B. is convicted before
Majesty’s justices of the peace for the said county of , [or
for the division of the said county of , or for the city, liberty, or town

1. *In*
London, &c.

Information to be laid before acting magistrate of district.

Power to summon witnesses.

Tender of
expenses,

Commitment (a).

Perjury, &c. (b).

Form of conviction.

(a) See *post*, "Commitment in Execution."

(b) See *post*, "Perjury," Vol. III.

1. In of , as the case shall happen to be,] for and
 London, &c. do adjudge him [or her, or them, as the case may be,] to pay and
 forfeit for the same the sum of Given under [hand and
 seal, (a)] the day and year aforesaid.' "

Proceedings not
 to be quashed
 for want of
 form (b).

Irregularity in
 distress.

Tender of
 amends.

Appeals to
 quarter ses-
 sions (c).

Recognizance (c).

Execution of
 judgment to be
 suspended.

Costs (d).

Sect. 26. "No order, judgment, or conviction made touching or concerning any of the matters in this Act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this Act, shall be quashed for want of form, or be removed or removable by certiorari or any other writ of process whatsoever into any of his Majesty's courts of record at Westminster; and where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining; but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage, if any, in an action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on behalf of the party distraining before such action brought."

Sect. 27. "If any person or persons convicted of any offence punishable by this Act, shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, it shall be lawful for such person or persons from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town or place where such judgment shall have been given; and that the execution of such judgment shall in such case be suspended, the person or persons so convicted entering into a recognizance within twenty-four hours of the time of such conviction, with two sufficient sureties in double the sum which such person or persons shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorized and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted shall be confirmed, such appellant or appellants shall forthwith pay down the sum he, she or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two justices or any one magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants

(a) These words are not in the form prescribed, but should be inserted.

(b) As to enactments of this nature, see *post*, "Conviction."

(c) See general, *ante*, "Appeal."

(d) See in general, *post*, "Costs."

shall escape, or where he, she or they shall reside, shall and may by warrant under their hands and seals or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty and of the costs and charges which shall be adjudged on the conviction; and if the appellant or appellants in any such appeal shall make good his, her or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers in like manner as costs given at any general or general quarter sessions are recoverable: provided always, that no person shall be detained in prison for any such offence for any greater length of time than three calendar months."

Sect. 28. "If any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, division, town corporate, borough or place where such conviction shall have been made, that the party or parties who shall think him, her, or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any county, division, city, town corporate, borough, liberty or place, where any such conviction shall have been made."

Sect. 29. "Every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this Act, shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of the reign of King George II., intituled 'An Act for rendering Justices of the Peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their Warrants,' so far as the said Act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace acting under the authority or in pursuance of this Act; and that no action or suit shall be had or commenced against, nor shall any writ be sued out, or copy of any writ be served upon any peace officer or officers, for anything done in the execution of this Act, until seven days after a notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intending to commence such action, which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty and may, by virtue of this Act, at any time within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in such notice; and if the same be not accepted, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions,

1. In London, &c.

Commitment for
non-payment
of (a).

Where conviction
had within six
days of sessions,
parties may
appeal to follow-
ing sessions (b).

Limitation of
actions (c).

Venue.
24 Geo. II. c. 44,
extended to this
Act.

Notice of action.

Tender of
amends.

(a) See in general, *post*, "Commitment in Execution."

(b) See in general, *ante*, "Appeal."

(c) As to enactments of this nature, see *post*, "Justices," Vol. III.

1. *In
London, &c.*

together with the general issue, or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants; and in every such case, or if the plaintiff shall become nonsuit, or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, or if any action or suit shall be brought after the time limited by this Act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find a verdict for the defendant or defendants, and the defendant or defendants shall be entitled to his or their costs; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper, and the plaintiff shall thereupon recover his costs against every such defendant or defendants." But these provisions as to the limitation and the notice of action are altered by the 5 & 6 Vict. c. 97, which see *post*, "*Justices*," Vol. III.

Costs.

General issue
may be pleaded.

Sect. 30. "If any action or suit shall be commenced against any other person or persons than a magistrate, justice, or peace officer, for any thing done in pursuance of this Act, the defendant or defendants in any such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear so to have been done, or if a verdict shall be recorded for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if judgment shall be given upon a verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for the recovery of his, her, or their costs." But now, by the 5 & 6 Vict. c. 97, s. 2, the defendant shall have only such costs taxed to him as will fully indemnify him. See "*Justices*," Vol. III.

Treble costs.

Limitation of
information.

Sect. 31. "No person shall be convicted of any offence under this Act, unless the complaint is made within forty-eight hours after the offence shall have been committed, except in cases of perjury; and that no person who shall be prosecuted to conviction for any offence done or committed against this Act, shall be liable to be prosecuted for the same offence under any other law."

Application of
penalties.

Sect. 32. "All penalties and forfeitures by this Act inflicted, and the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following; that is to say, one moiety thereof, where any offender or offenders shall be convicted, either by his, her, or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof, or in case there be no such person informing, then the whole thereof shall go and be paid to the churchwardens and overseers of the poor of the parish or parishes, for the use of the poor in the parish wherein such offence shall be committed, in such manner as such churchwardens and overseers of the poor shall in their discretion think fit."

Saving rights to
the cities of
London and
Westminster, &c.

Sect. 33. "This Act, or any thing herein contained, shall not extend or be construed to extend in any way to affect, lessen, or infringe upon the rights and privileges of the city of London, or of the worshipful company of Bakers of the said city, or of the wardmote inquests of the said city, or of the city or liberties of Westminster, or borough of Southwark; or any right or custom of any lord or lords of any leets,

or the rights of any clerk or clerks of the market, in any place which may be exercised and enjoyed by them or any of them, by virtue of any charters, bye-laws, prescriptions, usages, customs, privileges, grants or Acts of Parliament; but that all such rights and privileges shall be held, exercised and enjoyed by the parties respectively entitled thereto, as fully and amply to all intents and purposes as the same were held, exercised and enjoyed before the passing of this Act; any thing herein contained to the contrary notwithstanding."

By sect. 35, "the Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded." Public Act.

2. Out of
London, &c.

II. Baking Bread out of London or Liberties thereof, and beyond the Weekly Bills of Mortality, and Ten Miles of the Royal Exchange.

[6 & 7 Will. IV. c. 37.]

1. *Selling bread not by weight*, 486.
2. *Avoirdupois weight*, 486.
3. *Not keeping or having false scales and weights in shop*, 487.
4. *Not providing scales, &c., when Bread sent out in carts; or refusing to weigh*, 487.
5. *Adulterating Bread*, 487.
6. *Adulterating Corn, Meal, or Flour*, 488.
7. *Selling Flour of one sort of Corn as the Flour of another sort of Corn*, 488.
8. *Selling Bread made of mixed Meal unmarked*, 488.
9. *Miller, &c., having ingredients for the purpose of adulteration*, 489.
10. *Obstructing search*, 490.
11. *Baking or selling Bread on the Lord's Day*, 491.
12. *Opposing the execution of the Act*, 492.
13. *Procedure*, 492.
14. *Appeal*, 495.

By the 6 & 7 Will. IV. c. 37, intituled "An Act to repeal the several Acts now in force relating to Bread to be sold out of the City of London and the Liberties thereof, and beyond the Weekly Bills of Mortality, and Ten Miles of the Royal Exchange; and to provide other Regulations for the Making and Sale of Bread, and for preventing the Adulteration of Meal, Flour, and Bread, beyond the Limits aforesaid," [28th July, 1836,] reciting "Whereas by an Act passed in the third year of the reign of his late Majesty, King George the Fourth, intituled 'An Act to repeal the Acts now in force, relating to Bread to be sold in the City of London and the Liberties thereof, and within the Weekly Bills of Mortality, and Ten Miles of the Royal Exchange; and to provide other Regulations for the Making and Sale of Bread, and preventing the Adulteration of Meal, Flour, and Bread, within the Limits aforesaid,' certain regulations and provisions were made relative to the making and selling of bread, and for preventing the adulteration of meal, flour, and bread, within the aforesaid limits, which have been found beneficial to the public as well as to the bakers within the said limits: and whereas it is deemed expedient that the several Acts of parliament now in force relating to the making and selling of bread, or to the assize and price thereof, or to the adulteration of meal, flour, or bread, beyond the limits aforesaid, should

6 & 7 Will. IV.
c. 37.

Geo. IV. c. 16.

2. Out of London, &c.

All Acts relating to the making, &c., of bread, or to adulterating meal, &c., out of London and beyond Bills of Mortality, repealed.

Bread made of articles herein mentioned may be sold.

Bakers to make bread of any weight or size.

be altogether repealed, and that in lieu thereof the regulations, provisions, and penalties hereinafter contained, and which are similar to those contained in the said recited Act of the third year of the reign of his said late Majesty King George the Fourth, should be substituted: but inasmuch as the purposes aforesaid cannot be effected without the aid and authority of parliament; it is therefore enacted, "That from and after the 1st day of October, 1836, all and every Act or Acts of parliament now in force relating to the making and selling of bread, or to the assize and price thereof, or to the punishment of persons who shall adulterate meal, flour, or bread, or who shall sell bread deficient in its due weight, out of the city of London and the liberties thereof, and beyond the Weekly Bills of Mortality, and ten miles of the Royal Exchange, be and the same are hereby repealed; and there shall be no longer any assize of bread beyond the limits aforesaid, or any regulation respecting the price thereof."

Sect. 2. "It shall and may be lawful for the several bakers or sellers of bread out of the city of London and the liberties thereof, and beyond the Weekly Bills of Mortality, and ten miles of the Royal Exchange, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour, or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, balm, leaven, potato, or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained."

Sect. 3. "It shall and may be lawful for the several bakers and sellers of bread beyond the limits aforesaid to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit, any law or usage to the contrary notwithstanding."

OFFENCES.

(1.) Bread to be sold by weight, and in no other manner.

Proviso for French and fancy bread and rolls.

Sect. 4. "From and after the commencement of this Act all bread sold beyond the limits aforesaid shall be sold by the several bakers or sellers of bread respectively beyond the said limits by weight; and in case any baker or seller of bread beyond the limits aforesaid, shall sell or cause to be sold bread in any other manner than by weight, then and in such case every such baker or seller of bread shall for every such offence forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted shall order and direct: provided always, that nothing in this Act contained shall extend or be construed to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread or rolls without previously weighing the same."

A baker whose practice in making quartern loaves, the understood and recognized weight of each of which is 4lb., was to weigh the dough previous to baking, and to allow a certain number of ounces for shrinkage during the process of baking, but not to weigh the loaves after baking, unless required to do so by the purchaser, and who sold such loaves to a purchaser without weighing them, was held to have sold them by the denomination of quartern and not by weight, and therefore, to be rightly convicted under the above 4th section. (*Jones v. Huxtable*, 2 L. R. Q. B. 460; 36 L. J. M. C. 122.) *Semble* that if the sale had been meant to be a sale of four pounds of bread, and the seller accidentally or even designedly sold bread short of that weight, the case would not be within the statute. (*Ibid.*)

2.) Bakers to use avoirdupois weight.

Sect. 5. "The several bakers or sellers of bread respectively beyond

the said limits in the sale of bread shall use avoirdupois weight of sixteen ounces to the pound, according to the standard in the exchequer, and the several gradations of the same for any less quantity than a pound ; and in case any such baker or seller of bread shall at any time use any other than the avoirdupois weight and the several gradations of the same, he, she, or they shall for every such offence forfeit and pay any sum not exceeding five pounds nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Sect. 6. "Every baker or seller of bread beyond the limits aforesaid shall cause to be fixed in some conspicuous part of his, her, or their shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid ; and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight not being of the weight it purports to be, according to the standard in the exchequer, then and in every such case he, she, or they shall for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted shall order and direct."

Sect. 7. "Every baker or seller of bread beyond the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in and from any cart or other carriage, shall be provided with and shall constantly carry in such cart or other carriage a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid ; and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread without being provided with such beam and scales with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same, then and in every such case every such baker or seller of bread shall for every such offence forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices before whom such offender or offenders shall be convicted shall order and direct." The effect of sect. 7 is to impose a penalty of five pounds upon any refusal by a baker to weigh bread before a purchaser, whether sold in a shop or from a cart. (*Reg. v. Kingsley*, 16 L. T. 48.)

Sect. 8. "No baker or other person or persons who shall make bread for sale beyond the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times in the making of bread for sale beyond such limits use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account, or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant, or other person, who shall offend in the premises, and shall be convicted of any such offence by the oath, or

2. Out of London, &c.

(3.) Bakers to provide in their shops weights, &c., and to weigh bread, &c.

(4.) Bakers, &c., delivering by cart, &c., to be provided with weights, &c.

(5.) Adulterating bread (a).

*2. Out of
London, &c.*

Names of
offenders to be
published.

in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit and pay any sum not exceeding ten pounds nor less than five pounds, or in default thereof shall, by warrant under the hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months, with or without hard labour, from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid or recovered."

(6.) Adulterating
corn, meal, or
flour.

(7.) Selling flour
of one sort of
corn as the flour
of another sort.

Sect. 9. "If any person beyond the limits aforesaid shall put into any corn, meal, or flour which shall be ground, dressed, bolted, or manufactured for sale beyond such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall, beyond the limits aforesaid, knowingly sell or offer, or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale, then and in every such case every person so offending shall, upon conviction before any one or more magistrate or magistrates, justice or justices of the city, county, borough or place where such offence shall have been committed, on the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit and pay for every such offence any sum not exceeding twenty pounds nor less than five pounds, which such magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order."

(8.) Bread made
of mixed meal or
flour to be
marked with a
Roman M.

Sect. 10. "Every person who shall make for sale, or sell or expose for sale, beyond the limits aforesaid, any bread made wholly or partially of peas or beans, or potatoes, or of any sort of corn or grain other than wheat, shall cause all such bread to be marked with a large Roman M; and if any person shall at any time, beyond the limits aforesaid, make or sell, or expose for sale, any such bread without such mark as hereinbefore directed, then and in every such case every person so offending shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place shall from time to time order and adjudge: provided always, that nothing in this Act contained shall extend or be construed to extend to require any bread made of the meal or flour of wheat only, and in the making of which potato yeast shall be used, to be marked as hereinbefore is mentioned."

Proviso.

Magistrates, &c.,
by warrants may
search baker's
premises, and if
adulterated flour,
&c., be found,

Sect. 11. "It shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers authorized by warrant under the hand and seal or hands and seals of any such magistrate or

magistrates, justice or justices, (and which warrant any such magistrate or magistrates, justice or justices, is and are hereby empowered to grant,) at seasonable times in the daytime, to enter into any house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, beyond the limits aforesaid, and to search or examine whether any mixture or ingredient, not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any mixture or ingredient other than is allowed by this Act shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated, and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search it shall appear that any such meal, flour, dough, or bread so found shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredient shall be found which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread, then and in every such case it shall be lawful for every such magistrate or magistrates, justice or justices of the peace, or officer or officers authorized as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration as aforesaid; and such part thereof as shall be seized by any peace officer or officers authorized as aforesaid shall, with all convenient speed after seizure, be carried to the nearest resident magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall make any such seizure in pursuance of this Act, or to whom anything so seized under the authority of this Act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread, then and in any such case every such magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they in his or their discretion shall from time to time think proper."

SECT. 12. "Every miller, mealman, or baker beyond the limits aforesaid, in whose house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, ground, or possession any ingredient or mixture shall be found which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, forfeit and pay on every such conviction any sum not exceeding ten pounds nor

2. Out of London, &c.

same may be seized and disposed of, &c. (a)

(9.) Penalty if ingredients for adulteration of meal or bread are found in any premises.

(a) See *post*, "Search Warrant," could not perhaps be granted, see "Warrant." A general warrant "Weights and Measures," Vol. V.

2. *Out of
London, &c.*

First offence ;
second offence ;
subsequent
offence.

Name of
offenders to be
published.

(10.) Obstructing
search.

Offences occa-
sioned by wilful
default of
journeymen and
servants.

Proceedings.

If penalty on
journeyman is
not paid, magis

less than forty shillings, for the first offence, five pounds for the second offence, and ten pounds for every subsequent offence, or in default of payment thereof shall, by warrant under the hand and seal of hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months, with or without hard labour, from the time of such commitment (unless the penalty be sooner paid), as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered."

Sect. 13. "If any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorized to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this Act, he, she, or they so doing or offending in any of the cases last aforesaid shall, for every such offence, on being convicted thereof, forfeit and pay such sum not exceeding ten pounds, as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order: provided also, that if any person making or who shall make bread for sale beyond the limits aforesaid, shall at any time make complaint to any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, and make appear to him or them, by the oath, or in case of a Quaker by affirmation, of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this Act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under such person so making complaint, then and in any such case any such magistrate or magistrates, justice or justices, may and is or are hereby required to issue out his or their warrant, under his or their hand and seal or respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found; and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within his or their respective jurisdictions, is and are hereby authorized and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation, to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such complaint, then any such magistrate or magistrates, justice or justices, is and are hereby directed and authorized by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse on his conviction, to make

immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, is or are hereby authorized and required, by warrant under his or their hand and seal or hands and seals, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding one calendar month, nor less than ten days from the time of such commitment, as to such magistrate or magistrates, justice or justices, shall seem reasonable, unless payment shall be made of the money ordered after such commitment and before the expiration of the said term."

Sect. 14. Provided always, "That no master or mistress, journeyman, or other person exercising or employed in the trade or calling of a baker beyond the limits aforesaid, shall on the Lord's Day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind, or shall on any other part of the said day after the hour of half-past one of the clock in the afternoon, sell or expose for sale, or permit or suffer to be sold or exposed for sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last-mentioned regulations, or any one or more of them, and being thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say,) for the first offence the penalty of ten shillings, for the second offence the penalty of twenty shillings, and for the third and every subsequent offence respectively the penalty of forty shillings, and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper, to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings per diem, and to be paid to the prosecutor or prosecutors for his, her, or their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transferred by him to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct), of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid

2. *Out of London, &c.*

trates may order imprisonment, &c. (a).

(11.) Bakers not to bake on Lord's Day, or sell bread, &c., except between certain hours (b).

First offence;
second offence;
subsequent offence.

(a) See post, "*Commitment in Execution.*"

(b) See "*Lord's Day*," Vol. III.

2. Out of
London, &c.

Bakings may be
delivered till
half-past one
on Sundays.

No miller or
baker, &c., to
act as a justice
of the peace
under this Act.

(12.) Opposing
execution of the
Act.

Recovery and
application of
penalties and
forfeitures.

Distress (a).

after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders, and in default and insufficiency of such distress commit the offender or offenders to the house of correction, with or without hard labour, on a first offence for the space of seven days, on a second offence for the space of fourteen days, and on a third or any subsequent offence for the space of one month, with or without hard labour, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: provided nevertheless, that it shall be lawful for every baker residing beyond the limits aforesaid to deliver to his or her customers on the Lord's Day any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this Act contained: provided always, that the provisions of this Act, so far as they authorize the baking and preparing bread on Sundays, shall not extend to Scotland."

Sect. 15. "Provided always, that no person who shall follow or be concerned in the business of a miller, mealman, or baker shall be capable of acting or shall be allowed to act as a justice of the peace under this Act, or in putting in execution any of the powers in or by this Act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises shall for every such offence forfeit and pay the sum of one hundred pounds to any person or persons who will inform or sue for the same, to be recovered, together with full costs of suit, in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, or more than one imparlance shall be allowed."

Sect. 16. "In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act, every such person offending therein shall for every such offence forfeit any sum not exceeding ten pounds, at the discretion of the magistrate or magistrates, justice or justices of the peace, before whom he or she shall be convicted of such offence."

PROCEDURE.

Sect. 17. "All penalties, forfeitures, and fines by this Act inflicted or authorized to be imposed (the manner of levying, and recovering, and applying whereof is not herein otherwise directed) shall upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath, or in case of a Quaker on affirmation, of any credible witness or witnesses, which oath or affirmation every such magistrate or justice is in every such case hereby fully authorized to administer, be levied, together with the costs attending the information and conviction, by distress and sale of goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice (which warrant such magistrate or justice is hereby empowered and required to grant); and the overplus (if any) after such penalties, forfeitures, and fines, and the charges of such distress and sale are deducted, shall be returned upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate or justice to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless

(a) See *post*, "Warrant," Vol. V.

the offender or offenders shall give sufficient security to the satisfaction of such magistrate or justice for his or their appearance before such magistrate or justice on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said magistrate or justice is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant, it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorized and required by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize, for any time not exceeding one calendar month, with or without hard labour (save and except as herein otherwise directed), unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively when paid or levied, if not otherwise directed to be applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate, and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid."

2. Out of
London, &c.

Imprisonment (a).

Sect. 18. "Every summons to be served on any offender against any of the provisions of this Act shall be in the form or to the effect following:

Form of sum-
mons.

'To A. B. of
'County of } WHEREAS complaint and information hath been made before me,
— } C. D., one of her Majesty's justices of the peace [or, "magistrate"] for
to wit. } the said county, &c., by E. F. of , that, &c. [here state the
nature and circumstances of the case, as far as it shall be necessary to show the
offence, and to bring it within the authority of the justice or magistrate, and in
doing that, follow the words of the Act as near as may be]: these are therefore
to require you personally to appear before me (or such other justice or magistrate
as shall be then and there present) at in the said county, &c., on the
day of next, at the hour of in the noon,
to answer to the said complaint and information made by the said E. F., who is
likewise directed to be then and there present to make good the same. Herein fail
not. Given under my hand this day of ' "

Sect. 19. "That every information to be laid before any justice or magistrate, for any offence against this Act, shall be in the form or to the effect following:

Form of
information.

'County of } BE it remembered, that on the day of A. B.
— } of in the said county, informeth me one of her
to wit. } Majesty's justices of the peace [or, "magistrate," as the case may be]
for the said county, that of in the said county [here describe
the offence, with the time and place, and follow the words of the Act as near as
may be] contrary to the statute made in the year of the reign of the late
King William the Fourth, intituled An Act [set forth the title of this Act],
which hath imposed a forfeiture of for the said offence. Taken the
day of , before me, C. D.' "

Sect. 20. Provided always, "That all offences committed against this

(a) See post, "Commitment in Execution."

Sect. 24. "That no order, judgment, or conviction made touching or concerning any of the matters in this Act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this Act, shall be quashed for want of form, or be removed or removable by certiorari, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster; and where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action on the case; but no plaintiff or plaintiffs shall recover in any action, for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on the behalf of the party distraining before such action brought."

Sect. 25. Provided always, "That if any person or persons convicted of any offence punishable by this Act, shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, it shall be lawful for such person or persons from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town or place where such judgment shall have been given, and that the execution of such judgment shall in such case be suspended, the person or persons so convicted entering into a recognizance within twenty-four hours of the time of such conviction, with two sufficient sureties in double the sum which such person or persons shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorized and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if, upon hearing the said appeal, the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted, shall be confirmed, such appellant or appellants shall forthwith pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer for defraying the expenses sustained by reason of any such appeal; and in default of the appellants paying the same, any two justices, or any one magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may by warrant under their hands and seals, or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division or place, where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged

2. Out of London, &c.

Proceedings not to be quashed for want of form.
Certiorari (a).

Parties not to be trespassers *ab initio*.

Tender of amends.

(14.) Appeal to quarter sessions (b).

Recognizance.

Determination to be final.

Costs.

Appellant not paying sum adjudged against him, to be committed.

(a) See *post*, "*Certiorari*."

(b) See in general, *ante*, "*Appeal*."

2. Out of London, &c.

Costs to appellant making good his appeal.

Where conviction within six days of quarter sessions, time allowed for appeal.

Penalties in Scotland.

Limitation of actions.

Venue.

Part of 24 Geo. II. c. 44, extended to 6 & 7 Will. IV. c. 37.

Service of writ upon peace officers.

Tender of amends.

of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid, and which costs shall and may be recovered by the appellant or appellants against any such informer or informers in like manner as costs given at any general or general quarter sessions are recoverable : provided always, that no person shall be detained in prison for any such offence for any greater length of time than three calendar months."

Sect. 26. Provided also, "That if any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, division, town corporate, borough, or place where such conviction shall have been made, the party or parties who shall think him, her, or themselves aggrieved by any such conviction shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any such county, division, city, town corporate, borough, liberty or place where any such conviction shall have been made."

Sect. 27 and 28 relate to the recovery of penalties in Scotland.

Sect. 29. "Every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this Act, shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise, and not elsewhere, and that the statute made in the twenty-fourth year of the reign of King Geo. II., intituled 'An Act for rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in obedience to their Warrants,' so far as the said Act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace acting under the authority or in pursuance of this Act; and that no action or suit shall be had or commenced against, nor shall any writ be sued out or copy of any writ be served upon, any peace officer or officers for any thing done in the execution of this Act until seven days after a notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intending to commence such action, which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty, and may by virtue of this Act, and at any time within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money as amends for the injury complained of to the party complaining or to the attorney named in such notice; and if the same be not accepted, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender, the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants; and in every such case, or if the plaintiff shall become nonsuit or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, or if any action or suit shall be brought after the time limited by this Act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find a verdict for the defendant or defendants, and the defendant or defendants shall be entitled to his or

their costs ; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper ; and the plaintiff shall thereupon recover his costs against every such defendant or defendants." [But this enactment as to the limitation of actions and the notice of action is materially altered by the recent Act of 5 & 6 Vict. c. 97, for which see title "*Justices*," Vol. III.]

Sect. 30. "If any action or suit shall be commenced against any other person or persons than a magistrate, justice or peace officer for any thing done in pursuance of this Act, the defendant or defendants in any such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act ; and if it shall appear so to have been done, or if a verdict shall be recorded for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if judgment shall be given upon a verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for the recovery of his, her, or their costs." [But now by the 5 & 6 Vict. c. 97, s. 2, the defendant shall have such costs taxed to him as will fully indemnify him.—See "*Justices*," Vol. III.]

Sect. 31. Provided also, "That no person shall be convicted of any offence under this Act unless the complaint is made within forty-eight hours after the offence shall have been committed, or within such reasonable time as to the justice or justices shall seem fit, except in cases of perjury ; and that no person who shall be prosecuted to conviction for any offence done or committed against this Act shall be liable to be prosecuted for the same offence under any other law."

Sect. 32. "All penalties and forfeitures by this Act inflicted, and the application of which is not herein-before directed, shall, when recovered or paid, go and be disposed of in manner following ; (that is to say,) one moiety thereof, where any offender or offenders shall be convicted either by his, her or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders, and the other moiety thereof (or in case there be no such person informing then the whole thereof) shall go and be paid to some one of the overseers of the poor, or to some other officer, (as the convicting justice or justices may direct,) of the parish, township or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding or division in which such parish, township or place shall be situate, whether the same shall or shall not contribute to such general rate ; and no inhabitant of such county, riding or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid."

Sect. 33. Provided always, "That this Act or any thing herein contained shall not extend or be construed to extend in any way to affect, lessen, or infringe upon any right or custom of the Universities of Oxford or Cambridge, or either of them, or of any lord or lords of any leets, or the rights of any clerk or clerks of the market in any place which may be exercised and enjoyed by them or any of them by virtue of any charter, bye-laws, prescriptions, usages, customs, privileges, grants or Acts of Parliament, except so far as relates to the assize of bread and the regulations of the price and weight thereof ; but that all

2. Out of London, &c.

Costs.

In actions for executing Act, general issue may be pleaded.

Treble costs.

Limitation of information.

Application of penalties.

Proviso for rights of particular persons.

2. *Out of London, &c.*

such rights and privileges shall be held, exercised, and enjoyed by the parties respectively entitled thereto, as fully and amply to all intents and purposes as the same were held, exercised and enjoyed before the passing of this Act, any thing herein contained to the contrary notwithstanding."

Bribery.

What is.

BRIBERY, in a strict sense, is taken for a great misprision of one in a judicial place taking any thing whatsoever, except meat and drink in small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the Queen only; and is punishable at the common law by fine or imprisonment, both as to the party receiving and the party giving or offering the bribe. (1 *Hawk. c. 27*, s. 1, 2, 7; 3 *Inst.* 145.)

But this definition, in confining the offence to *judicial* officers, seems too narrow. (See *R. v. Beale*, 1 *East*, 183; *R. v. Vaughan*, 4 *Burr.* 2494; *Com. Dig. Officer*, (1).)

Lord Glenherrie's definition of bribery at common law is, "wherever a person is bound by law to act without any view to his private emolument, and another by a corrupt contract engages such person on condition of the payment or promise of money or other lucrative consideration to act in a manner which he shall prescribe, both parties are by such contract guilty of bribery." (2 *Dougl.* 400; *Rogers on Elections*, by *Wolferstan*, 10 *Ed.* 310.)

By statute.

The statutes regulating this offence at elections for parliament, are now 17 & 18 *Vict. c.* 102; 21 & 22 *Vict. c.* 87; and the 26 & 27 *Vict. c.* 29. (See tit. "*Parliament*.")

Attempts to bribe.

A mere attempt to bribe is an offence. Thus an attempt to bribe a privy councillor to procure a reversionary patent of an office grantable by the Queen under the great seal was held indictable, though it did not succeed. (*R. v. Vaughan*, 4 *Burr.* 2495; *R. v. Pollman*, 2 *Campb.* 231; *ante*, "*Attempts*.")

So in the case of an attempt to bribe at an election for parliament. (*R. v. Vaughan*, 4 *Burr.* 2500; *R. v. Plymton*, 2 *Ld. Raym.* 1377; and see *Hemslow v. Fawcett*, 3 *A. & E.* 51; *post*, "*Parliament*," Vol. V.) So of such an attempt at an election for a corporation. (*Harding v. Stokes*, 2 *M. & W.* 233.)

So is an attempt to bribe an officer of customs. (*R. v. Cassano*, 5 *Esp.* 231; *R. v. Everett*, 8 *B. & C.* 114; 2 *M. & R.* 35.) See 3 & 4 *Will. IV. c.* 51, s. 8, "*Excise*," Vol. II.

See forms of indictment for bribery, &c. and law, 2 *Chit. C. L.* 683 to 697.

See form of indictment for an attempt to bribe a constable, *Arch. C. L.* 15th ed. 720.

Bricks and Tiles.

For the Duties on Bricks and Tiles, and other Excise Regulations, see "*Excise*," Vol. II.

Quality and size of tiles.

BY the 17 *Edw. IV. c.* 4, every person using the occupation of making of the tile called plain tile (otherwise called thak tile), roof tile or cress tile, corner tile, and gutter tile, shall make it good, seasonable, and sufficient, and well whited and annealed.

And the earth, whereof any such tiles shall be made, shall be digged and cast up before Nov. 1st next before they shall be made, and stirred and turned before Feb. 1st next following; and not wrought before March 1st next after; and the same earth before it be put to making of tile shall be truly wrought and tried from stones.

And the veins called malin or marle, and chalk, lying commonly in the ground near to the land convenient to make tile, after the digging of the said earth whereof any such tile shall be made, shall be well severed from the earth of which the tile shall be made.

And every such plain tile so to be made shall be $10\frac{1}{2}$ inches long, $6\frac{1}{4}$ inches broad, and half an inch and half a quarter thick; roof tile or cres tile 13 inches long, half an inch and half a quarter thick, with convenient deepness; gutter tile and cover tile $10\frac{1}{2}$ inches long, with convenient thickness, breadth and deepness.

And if any person shall set to sale any such tile otherwise made, he shall forfeit to the buyer double value of the tile, and make fine and ransom at the Queen's will; to be recovered by action of debt, with costs. And also the justices of the peace and every of them may hear and determine offences against this Act; who shall assess upon the offender no less fine than for every 1000 plain tile 5s.; for every 100 roof tile 6s. 8d.; and for every 100 corner or gutter tile 2s.

And the said justices shall have power to call before them or any of them persons having experience or knowledge in making tile, to search and examine the digging, casting, turning, parting, making, whitening, and annealing aforesaid; and no person shall put any such tile to sale before it be searched, on pain of forfeiture. And if the searcher shall find any person offending against this Act, he shall present the defaulters at the next sessions, which shall be equal to a presentment of twelve men. And the searcher shall have of the tile maker for his labour for every 1000 plain tile searched one penny, for every 100 roof tile a half-penny, and for every 100 corner and gutter tile a farthing. Searcher neglecting his duty shall forfeit 10s.; and the justices may hear and determine the faults of the searchers in like manner as of the tile makers.

Searching for
tiles, &c.

The reason why no provision was made concerning *pantiles*, among the other sorts of tiles, by the above-mentioned Act of the 17th Edw. IV. is because *pantiles* are a modern invention, long after the date of that Act.

Pantiles.

By the 17 Geo. III. c. 42, s. 1, 2, "All bricks made for sale shall, when burnt, be not less than eight inches and a half long, two inches and a half thick, and four inches wide; and all pantiles not less than thirteen inches and a half long, nine inches and a half wide, and half an inch thick; on pain that the maker shall forfeit twenty shillings for every 1000 bricks, and ten shillings for every 1000 pantiles, and so proportionably for a greater or less number."

Quality and size
of bricks and
pantiles.

Sect. 3. "And the size of the sieves or screens for sifting or screening sea-coal ashes, to be mixed with brick earth in making of bricks, shall not exceed one quarter of an inch between the meshes."

Sect. 4. "All contracts for enhancing or fixing the price of bricks or tiles shall be void; and every brickmaker or tile-maker, or other person interested in the making for sale, offending therein shall forfeit twenty pounds; and every clerk, agent, or servant, ten pounds; half to the poor, and half to him who shall sue in six calendar months in one of the courts of Westminster." This seems an offence at common law, *post*, "Conspiracy."

Combinations to
enhance the
price.

Sect. 5. "All other penalties and forfeitures, not herein otherwise directed, shall be recovered before one justice, on proof by confession or oath of one witness; (the oath to be administered *gratis*;) to be levied by distress and distributed half to the informer, and half to the poor of the parish where the offender dwells; and if sufficient distress shall not be found, or such penalties and forfeitures shall not be forthwith paid,

Penalties.

V. *Manner, &c. of Repair; Widening, Diverting, &c.*, 514.

[22 *Hen. VIII.* c. 5, s. 4; 14 *Geo. II.* c. 33, s. 1; 43 *Geo. III.* c. 59; 54 *Geo. III.* c. 90, s. 2; 55 *Geo. III.* c. 143; 3 *Geo. IV.* c. 126, s. 32; 5 & 6 *Will. IV.* c. 50.]

1. *What is a Public Bridge, &c.*

VI. *Surveyors, &c.; Materials for Repairs, &c.*, 516.VII. *Assessments and Contracts, &c. for Repairs, &c.; Expenses of, &c.*, 520.

[22 *Hen. VIII.* c. 5; 1 *Anne*, st. 1, c. 18; 12 *Geo. II.* c. 29; 52 *Geo. III.* c. 110; 55 *Geo. III.* c. 143, s. 5; 4 & 5 *Vict.* c. 49.]

VIII. *Modes of Prosecution for Non-Repairs*, 530.

1. *By Criminal Information*, 531.

2. *By Presentment*, 531.

3. *By Indictment, and herein against whom it lies*, 533.

Form of, 533.

Plea to, 534.

Certiorari, 535.

Evidence and Witnesses, 536.

Trial, Jurors, 537.

Judgment, &c., 538.

[1 *Anne*, st. 1, c. 18; 43 *Geo. III.* c. 59.]

IX. *Injuries, &c. to Bridges*, 538.

[43 *Geo. III.* c. 59, s. 4; 5 & 6 *Will. IV.* c. 50, s. 22; 24 & 25 *Vict.* c. 97, s. 33.]

X. *Forms*, 539.I. *What is a Public and what a County Bridge, Freehold, &c. in.*

A public bridge is a highway, and a bridge of common right, to be used by the public on all occasion like a highway. (2 *Lord Raym.* 1174; *Salk.* 359, pl. 8.) The same rules as to deciding what will be a public highway will for the most part here apply. *Post*, "*Highway*," Vol. II.

What a public bridge.

To constitute a public bridge, the circumstance of its being always open along a highway is *prima facie* evidence thereof. (*R. v. Bucks*, 12 *East*, 192; *R. v. Salop*, 13 *East* 95.)

It is not, however, necessary that the bridge should be always open, but if the public use it at particular seasons it will suffice, as if they use it at all times when it is dangerous to pass through the river. (*R. v. Northamptonshire*, 2 *M. & S.* 262.) And a bridge used only on occasion of floods, and lying out of and alongside the road, may be a public bridge. (*R. v. Devon*, *R. & M. C. N. P.* 144.)

But if a bar be put across the bridge, which is always kept locked, except in times of flood, such is not a public bridge; for the bar shows that the public have only a right to use the bridge at times of flood. (*R. v. Marquis of Buckingham*, 4 *Camp.* 189.)

A bridge erected for the mere purpose of connecting a private mill with the public highway, or for any other private purposes, although the public may occasionally participate with the private proprietor in

1. What is
a Public
Bridge, &c.

the use of it, does not on that account necessarily become a public bridge. (*R. v. Buckinghamshire*, 12 *East*, 204.)

A useless or mere ornamental bridge is not a public bridge. (*R. v. West Riding, Yorkshire*, 5 *Burr*. 2594; 2 *Black*. 685; *R. v. Inhabitants of West Riding, Yorkshire*, 2 *East*, 342; *R. v. Gloucestershire*, 2 *East*, 356, n.)

Upon a question whether a particular structure be a bridge or a culvert, the fact of its being without parapets is not decisive. (*R. v. Whitney*, 3 *A. & E.* 69; 7 *C. & P.* 208.) Nor is the fact that it is built over water flowing in a channel between banks, though nothing can be a bridge which is not built over such a flow of water. (*Id.*)

A foot bridge formed by three planks and a hand rail carrying a foot path over a small stream is not such a county bridge. (*Reg. v. Inhabitants of Southampton*, 21 *L.J. M. C.* 201.)

Must be over a river or flowing water to make it a county bridge.

The bridge, to make it a public one and render the county liable to repair it, must be a "common and public building over a river or water flowing in a channel more or less defined, whether such river or channel be occasionally dry or not." (See *R. v. Oxfordshire*, 1 *B. & Ad.* 289; *R. v. Whitney*, *supra*; *Reg. v. Inhabitants of Derbyshire*, 2 *Q. B.* 745.) And therefore where the road, by which a bridge was occasionally flooded by a river, and for convenient access to the bridge a raised causeway had been made, having arches or culverts at intervals for the passage of the flood of water, which were equally necessary to the safety of the main bridge and the causeway, it was held that the inhabitants of the county were not bound to repair, such arches being at the distance of more than 300 feet from the end of the main bridge. (*R. v. Oxfordshire*, *supra*.) But there is no rule of law to prohibit a structure being treated as a bridge under which water does not flow at all times.

Thus where a structure, called Swarkeston Bridge, was 1275 yards long, at the eastern end were five arches, under which the river Trent flowed; at the western end eight arches, under one of which a stream constantly flowed; the rest of the space consisted of a raised causeway across low meadows, at different intervals in which there were twenty-nine arches, under most of which there were pools of water at all times, and under all of which the water of the Trent flowed in time of flood. There was no interval of causeway between the arches of the length of 300 feet. The county of Derby had immemorially repaired the whole structure. On an indictment against the inhabitants of the county, for the non-repair of the structure, describing the whole as a bridge: it was held that it was properly so described, and that the verdict was properly entered for the crown. (*Reg. v. Inhabitants of Derbyshire*, *supra*.)

Freehold, &c. in bridges.

As the freehold of highways in general is vested in the adjoining proprietors, or lord of the manor, and not in the public, so the freehold in bridges is in him that hath the freehold of the soil; but the free passage is for the public. (2 *Inst.* 705.)

Where a person built and dedicated a bridge to the public, and the materials ceased to be part of the bridge, it was held that the property in them reverted to the original owner. (*Harrison v. Parker*, 6 *East*, 154.)

II. Who shall Repair at Common Law.

Liability of county or division of county.

The County.—The inhabitants of a county are *primâ facie* bound by common law to repair all public bridges in the county. (2 *Inst.* 701.) And a similar obligation applies to the inhabitants of a riding, or any division of a county which corresponds in its definition to that of a

riding; for the Statute of Bridges, (22 Hen. VIII. c. 5, which declares the common law liability as to the repair of public bridges, uses the words "shire or riding"; and the statute of 1 Anne, st. 1, c. 18, s. 1, uses the terms "counties, shires, ridings, or divisions." (*Reg. v. Isle of Ely*, 4 N. S. C. 222; 19 L. J. M. C. 223.) Accordingly the Isle of Ely, which has, under the 6 & 7 Will. IV. c. 87, a separate commission and clerk of the peace, a separate county rate, and might have a *custos rotulorum*; and by the 7 Will. IV. & 1 Vict. c. 53, s. 7, in statutes passed and to be passed, is to be taken to be a division of a county, is *prima facie* liable to repair its bridges. (*Id.*)

And this liability of the county exists without distinction as to whether the bridge be a foot, horse, or carriage bridge. (*R. v. West Riding of Yorkshire*, 5 Burr. 2594; *R. v. Salop*, 13 East, 95; 2 Inst. 700; but see *Reg. v. Inhabitants of Southampton*, 21 J. L. M. C. 201.)

But the county may relieve themselves from liability by showing that the whole, or that a part of the bridge is within a franchise, in which former case the whole, or in the latter case so much as is within the franchise, shall be repaired by those of the franchise; (1 Hawk. c. 32, s. 1; 1 Inst. 701;) or by showing that others are bound to repair *ratione tenuræ* or otherwise. (See *R. v. Salop*, 13 East, 95; *R. v. Bucks*, 13 East, 192; 2 Inst 700.)

And as the county cannot be discharged of the general legal liability thrown upon it, except by showing that some other person or persons may be charged, the county of Southampton was held liable for the repair of four bridges in the Isle of Wight, which is a division within that county. There was no separate commission of the peace for the island; but it appeared that before the passing of the local Act, (53 Geo. III. c. xcii.,) all the public bridges in the island not repairable by tenure were repaired, either by the inhabitants of certain tithings, parishes, and places in which they were situate, or by rates in the nature of county rates levied on the inhabitants of all the parishes and places in the island. The island was assessed to the county rate; but before 1842, the public bridges in the island were never repaired out of the general county rate, but a rate in the nature of a county rate was ordered at the quarter sessions of the county to be made in every parish of the island for the repair of bridges, &c. In 1774, an arrangement was made at the quarter sessions of the county as to the proportions of the county rate to be paid by the island, from which proportion it was agreed that the amount which the island ought to pay for bridges and house of correction should be deducted, the island agreeing to maintain the bridges and house of correction in the island. In 1813, by this local Act, all bridges and places which had previously to that time been accustomed to be repaired by any parishes, tithings, divisions, or townships within the island, were thenceforth to be repaired in the same manner and by such ways and means as other bridges, usually called county bridges, within the island had been accustomed to be repaired; and it was held thereupon, that a bridge, which had, previously to the passing of that Act, been repaired by the tithing of K., was thenceforth repairable by the county; and a conventional mode of dividing the rate among certain parishes in the island could not alter the rights of the public. (*Reg. v. Inhabitants of Southampton*, 21 L. J. M. C. 201.)

The isolated, or detached parts of counties described in schedule (M.) to the Act for settling the divisions of counties as respects the election of members to serve in parliament, (2 & 8 Will. IV. c. 64,) are to be considered for all purposes as forming part of that county of which it is considered a part, for the purposes of 2 & 3 Will. IV. c. 64. (7 & 8 Vict. c. 61.) Therefore the duty of repairing a county bridge within a place, in schedule (M.) is transferred to the county named in that schedule. (*Reg. v. Breconshire*, 15 Q. B. 813; 19 L. J. M. C. 203.)

The Municipal Corporations Act, (5 & 6 Will. IV. c. 76,) which extends the limits of boroughs for the purposes of that Act, and adds to

2. Who shall Repair at Common Law.

As to detached parts of counties.

Parts of counties taken into boroughs within

2. *Who shall Repair at Common Law.*

the Municipal Corporations Act.

Liable though built by an individual, if before the 43 Geo. III. c. 59.

the borough in certain cases parts of the adjoining county, and thereby relieves such added part of the county from contribution to the county rates, does not thereby relieve the county from the obligation of repairing a bridge situated within such part, nor make the borough liable to contribute to the repairs thereof. (*Reg. v. New Sarum*, 7 Q.B. 954; 15 L. J. M. C. 15.)

The county is liable, notwithstanding the bridge was built by a private individual, if it was built for the public benefit, and before the 43 Geo. III. c. 59, s. 5; (*post*, 508;) or if built after that Act, provided it were built in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor, &c. If indeed a man wantonly erects a useless, or a merely ornamental bridge, neither he nor the public are bound to sustain it. And if it is principally for his own benefit, and only collaterally of benefit to others, the county has nothing to do with it. But where it is of public utility, the county ought to sustain the burden of repairing it, since the public reap the benefit of it. Else it would be a great discouragement to public-spirited persons to erect a beneficial bridge, provided they must either repair it themselves, or it must run to ruin. The authorities on this subject were all considered in *R. v. West Riding of Yorkshire*. (5 Burr. 2594; 2 Bla. R. 685.) In the case of *Glusburne Bridge*, decided before the 43 Geo. III. c. 59, s. 5, where to an indictment against the riding for the non-repair, the plea stated, that there was an ancient foot-bridge over the stream, which the township of *Glusburne*, who were bound to repair it, took down, and in lieu thereof erected the carriage bridge in question, and had repaired the new bridge since its erection; that the new bridge was of public utility, and used constantly, till carried away by a flood; that the ancient foot-bridge stood sixty yards below the new bridge in the same highway; all the court held the riding liable to the repair, on the general principle, that if a private person built a bridge which afterwards became a public convenience, the county is bound to repair it. (*Ibid.*)

If indeed a person erect a bridge in a highway, of a slight and incommodious nature, and evidently intended to throw a burden on the county, it may be indicted and abated as a common nuisance. (*R. v. West Riding of Yorkshire*, 2 East, 348; and see the enactment of the 43 Geo. III. c. 59, s. 5, *post*, 508.)

The county is liable to repair a public bridge built in the highway, and used by the public above forty years, though originally erected for the convenience of an individual. (*R. v. Glamorganshire*, 2 East, 356, n.)

And where a person about forty-five years back erected a mill and dam thereto for his own profit, *per quod* he deepened the water of a ford, through which there was a public highway, but the passage through which was, before the deepening, very inconvenient at times to the public, and the miller afterwards built a bridge over it which the public had ever since used, the Court of Queen's Bench held that the county and not the miller were chargeable with the reparation. (*R. v. Kent, Inhab. of*, 2 M. & S. 513.)

By their Act of Incorporation the proprietors of the Surrey Canal were required to erect and maintain bridges over the canal where it intersected any public highway, bridle-way, or footpath, and also for the use of the owners and occupiers of land, &c. adjoining to the canal. In 1804 the company erected a swivel bridge (of sufficient dimensions to allow a carriage to traverse it) across the canal, at a spot where there had formerly been a public way, which at the most was only a bridle-way. This bridge was originally intended for the exclusive accommodation (as a carriage-way) of the tenants of an estate adjoining called the Rolls Estate. The neighbourhood having become extremely populous, and a district church having been built near the bridge, the public from 1822 to 1832, freely and without interruption used it as a carriage-way. In 1832 the company for the first time imposed a toll upon all

carriages traversing the bridge, with the exception of those belonging to the tenants of the Rolls Estate; and in 1840 they removed the old swivel bridge, and erected a convenient stone bridge in the place of it. In an action of trespass against the defendant for passing over the bridge without paying toll, the judge told the jury, that, supposing the bridge in question to have been originally erected for the exclusive accommodation of the tenants of the Rolls Estate, still, if, in consequence of the acts of the company, an idea grew up in the minds of the public that the company had dedicated the way to the public use, they might find such dedication. This was held not a misdirection; and the court thought the evidence warranted the jury in finding a dedication. (*Surrey Canal Company v. Hall*, 1 Scott, N. R. 264.)

So the county is liable to the repair notwithstanding the bridge was erected and repaired by the crown and for the benefit of the sovereign. Thus in an indictment against the inhabitants of the county of Bucks for not repairing the half of Datchet Bridge, they pleaded specially, and traversed the bridge being a public one. The defendants were found guilty, subject to a special case. The case stated that Queen Anne, for her convenience in passing to and from Windsor Castle, built a bridge over the Thames at Datchet, in the common highway leading from London to Windsor, in lieu of an ancient ferry, with a toll which belonged to the crown. She and her successors repaired the bridge till 1726, when it having in part fallen in and become impassable, the whole was removed, and the materials converted to the use of the king, who re-established the ferry. The question was, whether this was a public bridge and the defendants liable to repair and rebuild? The opinion of the court was, that this bridge, situated in a principal highway, and used, as it so long was, for all persons as a public bridge, and being also of great public use and convenience, was and is a bridge repairable, as to the half part now in question, by the county of Bucks, in which it was, until the period of its late dilapidation and destruction, situate. (*R. v. Bucks*, 12 East, 192.)

The county or riding are even liable to the repair of a public bridge erected by commissioners under an Act of Parliament before the 43 Geo. III. c. 59, s. 5, though the latter are empowered to raise tolls in order to support it, or though other funds are provided for the repairs, there being no special provision for exonerating them from the common law liability or transferring it to others. (*R. v. West Riding of Yorkshire*, 2 East, 342.) *Et per* Lord *Ellenborough*, C. J., "By the common law counties are chargeable with the repair of public bridges, unless it be shown, as the statute 22 Hen. VIII. c. 5, (which was founded on the common law, and of which hereafter, *post*,) says, 'what persons, lands, tenements, and bodies politic, ought to make and repair such bridges.' In the absence of such proof, that burden is, by the operation of the common law, thrown on the inhabitants of the county in which the bridge lies. But in order to effect this, it is not enough that a new bridge shall be built in a highway used by the public, it must also be useful to the public. I do not lay stress on the idea of the public having adopted the bridge by passengers going over it, because if it occupy the highway they cannot help using it. I only rely on the using of it so far as to show that it does not appear to have been treated as a nuisance, but to have been acquiesced in by the public. If, however, it be built in a slight or inconvenient manner, no person can at his choice impose such a burden on the county, and it may be treated altogether as a nuisance, and indicted as such. But if the public lie by without objection, and make use of it for some time, it is evidence that they adopt the act, and the bridge becoming of public benefit, the burden of repair ought properly to fall upon the public. Now that this bridge is for the common good, is proved by the use of it by all the king's subjects passing that way, by its not having been treated as a nuisance, but acquiesced in. Then, after having enjoyed the benefit of

2. Who shall
repair at
Common
Law.

Liable though
built by the
Crown.

Liable though
built under Act
of Parliament or
by trustees of
turnpike road
before the
43 Geo III.

2. *Who shall
Repair at
Common
Law.*

it, shall the public object to it when they begin to feel the burden of repair? The rule laid down by *Aston, J.* in the *Glusburne* Bridge case, seems to be the true one, that "if a man build a bridge, and it becomes useful to the county in general, the county shall repair it." And as to the adoption of it by the public, there is good sense in not relying on that, except as evidence of its being a public bridge and of utility to the public." *Per Grose, J.*, "It being stated in the plea that the bridge was erected by the trustees of a turnpike road under a public Act of Parliament, I cannot suppose that it was not a public bridge built for the benefit of the public, and of public utility; and not merely for ornament, or for private benefit. If it were shown that a bridge had been built at first in a slight and imperfect manner, for the purpose of throwing the expense immediately on the county, I should think that it was a public nuisance and indictable." *Lawrence, J.*, agreed, and said, "The principle to be collected from the *Glusburne* Bridge case is, that if the bridge be of public utility, the county who derive advantage from it must support it. But it is said that we cannot collect that the bridge in question is of such a description. But when we observe that it was erected by the trustees of a turnpike road under an Act of Parliament, we cannot suppose it was erected for other purposes than for the public utility."

Liable though
built by trustees
of a road if
before the 43
Geo. III.

In the same case as to the particular question of the liability of the trustees of the road, *Lord Ellenborough, C. J.*, said, "As to the objection that it ought to be repaired by the commissioners of the turnpike by whom it was erected, and who have authority to raise tolls for the purposes of the Act, I cannot find any authority for them to erect bridges under this Act; however, I will suppose they were authorized to erect the bridge: yet no fund having been specially provided by the legislature for the repair of it, the burden must necessarily fall where the common law has placed it, viz. on the riding. I am aware of the extent of this opinion, and if the trustees under similar Acts throw this burden generally on the counties, it may be necessary to make special legislative provision in future." *Per Lawrence, J.*, "As to the objection that the trustees are empowered to take tolls, that is, supposing that they are to derive some private advantage from the tolls, which is not the case, whatever tolls are raised must be laid out on the maintenance of the roads. It might as well be contended, that if a parish were to build a new bridge on a road within their limits, they would be bound to keep it in repair afterward, and that the county would not be liable, as that the trustees are in this case, because the bridge is built in the turnpike road; in truth, the trustees are merely substituted in lieu of the parish;" and *Le Blanc, J.*, observed, "That the circumstance of the bridge being built by trustees under an Act of Parliament, to which the defendants must be considered as parties and assenting, and by those to whom the legislature delegated the trust of determining whether it were proper to build the bridge, made the case stronger against the defendants than where an individual had in the first instance exercised his own discretion."

And this common law liability of a county to repair a public bridge is so strong, that although a public bridge has been erected and constantly repaired by trustees under Act of Parliament, and although there be funds for the repairs, the county are still liable to repair it if it was built before the 43 Geo. III. (*R. v. Oxfordshire*, 4 B. & C. 194; 6 D. & R. 231. See however *Nicholl v. Allen*, 1 B. & S. 916, 934; 31 L. J. Q. B. 43, 283.)

And where trustees of a turnpike Act built a bridge across a stream where a culvert would have been sufficient, but a bridge was better for the public, the county cannot refuse to repair such bridge on the ground that it was not absolutely necessary. (*R. v. Lancashire*, 2 B. & Ad. 813.)

In 1 *Ld. Raym.* 725, *Lord Holt* says, "The inhabitants of every parish of common right ought to repair the highways, and, therefore, if

particular persons are made chargeable to repair the said ways by a statute lately made, and they become insolvent, the justices of the peace may put that charge upon the rest of the inhabitants."

Where an Act of Parliament appoints trustees for taking down an old bridge and building a new one in its room, the county is not liable to repair until the purposes of the Act are accomplished, and the powers it confers cease to operate. (*Reg. v. Somerset, Inhab. of*, 16 *East*, 305.)

Where the Medway Navigation Company, being empowered under a local Act to make the river navigable and to take tolls, "and to amend or alter such bridges or highways as might hinder the passage or navigation, leaving them or others as convenient in their room," had forty years before destroyed a ford across the river, in the common highway, by deepening its bed, and built a bridge over the same place; it was held that they and not the county were bound to keep such bridge in repair, they being under a continuing condition to preserve the new passage in lieu of the old one, which they destroyed for their own benefit. (*R. v. Kent, Inhab. of*, 13 *East*, 220.)

And where certain persons and their successors were authorized by Act of Parliament to make a river navigable, and to cut the soil of any person for making any new channel, &c., by virtue of which they cut through a highway and rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the navigation; the Court of Queen's Bench held, that the proprietors and not the county were liable to repair. After argument in this case, Lord *Ellenborough*, C. J., said, "The undertakers of this navigation have a duty, as it seems to me, arising out of the execution of their own powers under this Act. The Act enables them to cut new channels as occasion shall require; and if occasion requires them to cut through a public highway, their duty is to furnish a substitute to the public by means of a bridge." *Bayley*, J., said, "This differs from the last case of *R. v. Kent* (*supra*): there the county derived a very essential benefit from the bridge; they had before but a passage through the ford, which is always an inconvenient one; but what benefit does this county derive from passing over a bridge instead of the solid highway." Judgment for the crown. (*R. v. Kerrison*, 3 *M. & S.* 526.)

And where for the purpose of draining the great level the adventurers cut an artificial river which intersected the public highway, under the authority of commissions of sewers and other powers, and thereby it became their duty to erect a bridge over the river in the line of the highway, it was held that inasmuch as the bridge was for their benefit and convenience, and the interruption of the highway could only be legal on the condition of substituting another highway, which could be only by a bridge as convenient for the public as the old one, and that the public were in truth no gainers by the change, they and not the inhabitants of the division of Ely were liable to repair it when it became out of repair, and that liability was imposed upon a corporation in whom the cut, banks, and bridge were vested by an Act of Parliament. (*Reg. v. Ely*, 4 *N. S. C.* 222; 19 *L. J. M. C.* 223.)

By the Railways Clauses Consolidation Act, 8 Vict. c. 20, s. 46, a bridge made by a railway company to take a public highway over or under the railway is "with the immediate approaches and all other necessary works connected therewith" to be "executed and at all times thereafter maintained at the expense of the company" and this has been held to make the company liable to keep in repair not only the fabric of the bridge and structure of the approaches, but also the roadway over it, metalled. (*North Staffordshire Railway Company v. Dale*, 8 *E. & B.* 836; 27 *L. J. M. C.* 147.) And though the above general Act may be excluded by the terms of the special Act, yet it is not controlled unless the provisions of the latter are inconsistent with it.

2. Who shall
Repair at
Common
Law.

When not
liable.

Under Railways
Clauses Consoli-
dation Act.

2. Who shall Repair at Common Law. (*Leech v. North Staffordshire Railway Company*, 5 H. & N. 160; 29 L. J. M. C. 151.)

Bridges built after the 43 Geo. III. not liable to repair unless built to satisfaction of county surveyor, &c.

43 Geo. III. c. 59.

Surveyor, &c., to inspect erection. Sessions to arbitrate in disputes.

So where a canal company before the 43 Geo. III. cut and deepened a ford across a highway, and thereby rendered a bridge necessary for the use of the public, which they built; it was held they were bound to repair it, the bridge being necessary for the purposes of the company, and not for the public. (*R. v. Lindsey, Lincolnshire*, 14 East, 317.)

In order to protect a county from the charge of repairing bridges, which in point of utility were not equal to the expense, "and for the more clearly ascertaining the description of bridges hereafter to be erected, which inhabitants of counties shall and may be bound or liable to repair and maintain;" it is enacted by stat. 43 Geo. III. c. 59, s. 5, "that no bridge hereafter to be erected or built in any county by or at the expense of any individual or private person or persons, body politic or corporate, shall be deemed or taken to be a county bridge or a bridge which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor or person appointed by the justices of the peace at their general quarter sessions assembled, or by the justices of the peace of the county of Lancaster, at their annual general sessions; and which surveyor or person so appointed is hereby required to superintend and inspect the erection of such bridge when thereunto requested by the party or parties desirous of erecting the same; and in case the said party or parties shall be dissatisfied, the matter shall be determined by the said justices respectively at their next general quarter sessions, or at their annual general sessions in the county of Lancaster." (See the other sections of this Act, *post*, pp. 511, 512, 521.)

Trustees appointed by a local turnpike Act are individuals or private persons within the meaning of this statute, and therefore a bridge erected by such trustees, after the passing of that Act, but not under the direction or to the satisfaction of the county surveyor, &c., is not a bridge which the inhabitants of the county are liable to repair. (*R. v. Derby*, 3 B. & Ad. 147.)

The Act applies only to bridges newly built, and not to those repaired or widened. (*R. v. Lancashire*, 2 B. & Ad. 813.) A county bridge having been washed away in 1807, except the buttresses, which remained unremoved, was, after the passing of 43 Geo. III. c. 59, rebuilt wider than before, and without notice to the county surveyor, by the parish, partly with the old materials, and in the same line of passage over the river; it was held that the county was liable to repair, and that this was not a new bridge within the meaning of the Act. (*R. v. Devonshire*, 2 Nev. & M. 212; 5 B. & Ad. 383.)

Parishes.

Parishes and Townships.—A portion of a county, as a parish or township, or the like, may by immemorial custom be liable to repair a particular bridge or all bridges within the parish, in the same way as a township or other district in a parish may by custom be liable to repair a highway. And in *R. v. Hendon*, (4 B. & Ad. 628,) it was held, that a parish may be indicted for non-repair of a bridge, without stating any other ground of liability than immemorial usage. But a mere conventional mode of dividing the county rate for the purpose of repairing bridges amongst certain parishes cannot relieve the county. (*Reg. v. Southampton*, 21 L. J. M. C. 201.)

Townships.

In *R. v. Ecclesfield*, 1 B. & Ald. 359, Lord Ellenborough, C. J., said, "As the case of parishes, and highways within them, is analogous to that of counties and bridges, the charge of repairing a highway shall fall upon the parish, in default of usage and custom to charge the particular portion of the parish wherein it is situate; and as a hundred, or parish, or other known portion of a county, may by usage and custom be chargeable to the repair of a bridge erected within it, so in

like manner a township or other known portion of a parish may by usage and custom be chargeable to the repair of the highways within it. And upon an attentive perusal of the passages of Lord *Coke's* commentary, we think it plain, that in drawing the distinction between bodies politic and natural persons, the learned writer speaks of individual persons, and not of an aggregate of the inhabitants of parishes or other places."

Where an indictment alleged that there was in a township an ancient bridge immemorably repairable by the township, and it appeared on the trial that it had been in one year widened at the expense of the township from nine feet to fifteen feet, it was held, that whether or not the township was liable to repair the whole, they were at all events not discharged from the repair of the original part, and that, if liable only to that extent, they could draw the line by evidence on the trial; (*Reg. v. Adderbury, East*, 5 Q. B. 187; 13 L. J. M. C. 9;) but it would seem that if the original part was repairable by them, and the widening was necessary, the township would be liable to repair the whole. (*Ib.*)

2. Who shall repair at Common Law.

Corporations.—By reason of prescription, corporate bodies may be liable to repair a public bridge. (2 Inst. 700; *R. v. Oswestry*, 5 M. & S. 561; *Reg. v. Birmingham and Gloucester Railway Company*, 2 G. & D. 236; or by statute, see *Reg. v. Ely*, 4 N. S. C. 222; 19 L. J. M. C. 223, ante, pp. 503, 507.) But herein there is a diversity between bodies politic or corporate, spiritual or temporal, and natural persons, for the bodies politic or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local and have a succession perpetual; but a natural person cannot be bound by act of his ancestor, without a lien, or binding, and assets. (2 Inst. 700.)

Bridges within corporate cities or boroughs which the cities or boroughs are legally bound to repair are to be for the future maintained, repaired, &c., under the management and control of the council of such city or borough. (13 & 14 Vict. c. 64, s. 1.) And by sect. 4, "Every bridge within the boundary of a city or borough within the 5 & 6 Will. IV. c. 76, the inhabitants whereof before the passing of that Act were by prescription or otherwise liable to maintain is to be maintained, &c., under the sole management and control of such city or borough."

As to boroughs under the "Municipal Corporations Act," see *Reg. v. New Sarum*, 7 Q. B. 954; 15 L. J. M. C. 15; ante, p. 504.

Public Bodies.—As to the liability of public bodies to repair, see *Public bodies*, ante, pp. 505, 506.

Individuals.—Individuals also, by reason of the tenure of their lands or tenements, may be liable to repair a public bridge. (2 Inst. 700.) And where any person is liable to repair such a bridge, his tenant for years (being in possession) will be under the same obligation, and liable to an indictment for not repairing it. (*R. v. Bucknall*, 2 Lord Raym. 804, 856; 1 Salk. 367; 2 Saunders, 158, n. (9).) But the onus of the repair, *ratione tenuræ*, falls ultimately upon the owner, and not upon the occupier. (*Baker v. Greenhill*, 3 Q. B. 148.)

On indictment for non-repair of a bridge, charging the defendants as liable, *ratione tenuræ*, they produced at the trial a record setting forth a presentment in the time of Edw. III. against a bishop of L. (not connected with the present defendants), who was thereby charged with non-repair of the same bridge and liability to repair. The record stated a trial of this presentment at the spring assizes in the year 20 Edw. III., and an acquittal of the bishop as not liable; it further stated, that the jury being asked who was bound to repair, said they did not know, and being asked when and by whom it was first built or repaired, said about

2. Who shall
repair at
Common
Law.

sixty years since, and then of alms, and that a bishop of L. bestowed forty shillings on the workmen repairing it of his alms and not otherwise. In addition to this record, the defendants put in a writ of privy seal of June 28th, 20 Edw. III., for a grant of pontage to the town of K. (where the bridge was), reciting as the cause of the grant, that the bridge was ruinous and no person bound to repair in certain, according to that which was found by inquest. They also put in the grant of pontage dated in the same year. The court held that this evidence was admissible on behalf of the defendants. The court also considered that the special findings of the jury might have been regular, according to the practice in the time of Edw. III., and that, at all events, the acquittal of the bishop, followed by the writ and grant of pontage, was evidence to negative the existence of a prescriptive liability to repair the bridge in any person. (*Reg. v. Sutton*, 8 A. & E. 516.)

Bridge enlarged
by an individual.

In the case of *R. v. West Riding of Yorkshire*, (2 East, 353, n.) defendants were indicted for not repairing a public carriage bridge; plea, that certain townships had immemorially repaired: issue taken thereon. The facts were that there had been immemorially a foot bridge till 1745, when the townships enlarged it to a horse bridge, and afterwards to a carriage bridge, at their own expense; that the riding had never repaired it. It was held that this evidence did not maintain the defendant's plea; and further, that where a party is bound to repair a foot bridge, he shall not discharge himself by turning it into a horse or carriage bridge, but shall still repair it as a foot bridge, *i. e. pro ratâ*.

Converting a foot
into a horse
bridge.

Repairing of
house adjoining
bridge.

A tenant at will of a house, which adjoins to a public bridge, is bound to repair the house, so that the public be not prejudiced by the want of repair, although, being only tenant at will, he be not bound to repair as to his landlord. (*Reg. v. Watson*, 2 Ld. Raym. 856; 1 Salk. 357.)

Infants.

An infant, whose guardian is in possession of an estate in respect of which there is a liability to repair a bridge, is not liable to an indictment for non-repair either as owner or occupier. A guardian in socage may be liable. (*R. v. Sutton*, 5 N. & M. 353.)

Guardian.

Lords or tenants
of manors.

A liability being laid, *ratione tenuræ*, in the lords of a manor to repair a bridge by reason of the demesnes of the manor is good. (*R. v. Bucknall*, 2 Lord Raym. 804.) And as the obligation is by reason of the demesnes of the manor, if part of the demesnes be granted to an individual, he will be obliged to contribute to the repairs. (*Id.*; *Deac. C. Dig.* 168.) If a manor be held by the service or tenure of repairing a common bridge or highway, and that manor afterwards comes to be divided into several hands; every one of these alienees, being tenants of any parcel either of the demesnes or services, shall be liable to the whole charge, and they are contributory among themselves. And though the lord of the manor might upon the several alienations agree to discharge those that had purchased of him of such repairs, yet that shall not alter the remedy for the public, but only bind the lord and those that claim under him. As the whole manor, and every part of it, in the possession of one tenant, was once chargeable with the reparations, so it shall remain, notwithstanding any act of the proprietor: it shall not be in his power to apportion the charge whereby the remedy for the public benefit shall be made more difficult, or by alienations to persons unable, to render it, in respect of the parts which should come into such hands, quite frustrate. (*R. v. Duchess of Bucklugh*, 1 Salk. 358.)

An individual who took tolls under two statutes in consideration of building and maintaining a bridge was held to be liable, so long as he remained proprietor and took the tolls, to reinstate and maintain the bridge, although that duty was not expressly imposed. (*Nicholl v. Allen*, 1 B. & S. 916, 934; 31 L. J. Q. B. 43, 283.)

III. Who liable to Repair by Statute.

By the Great Charter, 9 Hen. III. c. 15, "no town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed." And none can be compelled to make new bridges where never any were before, but by Act of Parliament. (2 Inst. 701.) This statute is no more than declaratory of the common law. (2 Inst. 700.)

By the 22 Hen. VIII. c. 5, (called the Statute of Bridges,) after reciting by section 2, that "in many parts of this realm it cannot be known and proved what hundred, riding, wapentake, city, borough, town, or parish, nor what person certain or body politic ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as own to make them, for the most part lie long without any amendment, to the great annoyance of the king's subjects."

Sect. 3, for remedy thereof, enacts, "that in every such case the said bridges, if they be without city or town corporate, shall be made by the inhabitants of the shire or riding within the which the said bridge decayed shall happen to be; and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall happen to be; and if part of any such bridges so decayed happen to be in one shire, riding, city, or town corporate, and the other part thereof in another shire, riding, city, or town corporate, or if part be within the limits of any city or town corporate, and part without and part within one riding and part within another, that then in every such case the inhabitants of the shires, ridings, cities, or towns corporate shall be charged and chargeable to amend, make, and repair such part and portion of such bridges so decayed as shall lie and be within the limits of the shire, riding, city, or town corporate, wherein they be inhabited at the time of the same decays." This statute is only in affirmance of the common law. (2 Inst. 700.)

Bridges broken in the Highways.—This extendeth only to common bridges in the Queen's highways, and not private bridges, to mills, or the like; the remedy in which case is not by indictment, but by action. (2 Inst. 701; 1 Hawk. c. 32, s. 19.)

Within a City or Town Corporate.—It hath been questioned whether a borough, which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. (1 Hawk. c. 32, s. 19; 1 Keb. 68.)

It seems that where the Queen enlarges the boundaries of a city by annexing part of the county to the county of the city, the enlarged part is to be considered as parcel of the old county of the city, so as to charge the inhabitants with the repairs of bridges, which were situate at the time of the statute within the county at large; for as the statute lays *no absolute charge till the bridge is in decay*, and as the bridges in question (which were within the county of Norfolk when the statute was made) were not then actually in decay, the statute had no operation on them before they were annexed to the city of Norwich. (*R. v. Norwich*, 1 Stra. 177; and see *R. v. St. Peter, York*, 2 Lord Raym. 1249; *Deacon, C. Dig.* 165.)

The inhabitants of a town are not bound to repair a bridge out of the town. (*R. v. Gamlingay*, 3 T. R. 513.) Nor if part of a county is brought within the limits of a borough for the purpose of the Municipal Corporations Act, is the county relieved from the duty of repairing a bridge within such added part. (*Reg. v. New Sarum*, 7 Q. B. 954; 1 L. J. M. C. 15.)

But now by the 13 & 14 Vict. c. 64, s. 5, after reciting the 5 &

3. Who liable to Repair by Statute.

Who to repair by statute.
9 Hen. III. c. 15.

22 Hen. VIII.
c. 5.

Bridges out of cities, &c.

Bridges in cities, &c.

Construction of stat. 22 Hen. VIII. c. 5.

The Municipal Corporations Act,

3. *Who
liable to
Repair by
Statute.*

6 Will. IV. c. 76, "Every bridge which is wholly or in part included within the boundary of any such city or borough, the inhabitants of which before the passing of the said recited Act were, by prescription or otherwise, liable to and did maintain the bridges and parts of bridges within their respective cities and boroughs, shall as to the whole of such bridges, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough, if part only is within such limits, be maintained, altered, widened and repaired, improved or re-built under the sole management and control of the council of such city or borough." See *post*, "*Bridges of Cities and Boroughs*," p. 542.

Where townships have enlarged a bridge, which they were before bound to repair as a foot bridge, to a carriage bridge, they shall be liable *pro rata*. (*R. v. West Riding of Yorkshire, 2 East, 353, n., ante, 452.*)

By the Inhabitants.—The persons to be charged by this Act are comprehended under the word inhabitants; which word, being the largest word of the kind, is needful to be explained.

First, although a man be dwelling in a house in a foreign county, city, or town corporate, yet if he hath lands in his own possession and manurance in the county, city, or town corporate, where the decayed bridge is, he is an inhabitant, both where his person dwelleth, and where he hath lands in his own possession.

Secondly, if a man dwelleth in a foreign shire, city, or town corporate, and keepeth a house and servants in another shire, city, or town corporate, he is an inhabitant in each shire, city, or town corporate within this statute.

Thirdly, *ex vi termini*, every person that dwelleth in any shire, city, or town corporate, though he hath but a personal residence, yet he is said in law to be an inhabitant, or a dweller there, as servants or the like; but this statute extendeth not to them, but to such householders who may be distrained for non-payment; and it would be infinite and impossible to tax every inhabitant being no householder.

Fourthly, every corporation and body politic residing in any county, city, or town corporate, or having lands or tenements in any county, city, or town corporate, which they keep in their own hands and occupation, are said to be inhabitants there within the purview of this statute.

Fifthly, an infant that hath house or lands by descent or purchase is liable to the public charge; and so is the husband of a feme covert. (2 *Inst.* 702.)

As to the meaning of the word inhabitant, see *Wilson v. Churchwardens of Sunderland-near-the-Sea*. (17 *C. B. N. S.* 694; 34 *L. J. M. C.* 90.)

IV. Concerning the 300 Feet at the Ends of Bridges.

Bridges built before the 20th March, 1836.—Stat. 22 Hen. VIII. c. 5, s. 9, after reciting, "Forasmuch that albeit bridges decayed were amended and repaired according to the tenor of this Act, yet nevertheless, if speedy remedy for the amendment of the ways next adjoining to every of the ends of such bridges should not be had and made, the king's subjects should take little or none avail or commodity in many parts of this realm by the making of the bridges: in consideration whereof," it is enacted, "that such part and portion of the highways in every part of this realm, as well within franchise as without, as lie next adjoining to the ends of any bridges within this realm, distant from any of the said ends by the space of three hundred foot, be made, repaired, and amended as often as need shall require; and that the justices of the

Bridges built
before the 20th
March, 1836.
County bound to
keep in repair
300 feet of the
highway at each
end.

peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the quorum, within the limits of their commissions and authorities, shall have power and authority to inquire, hear, and determine in the king's general sessions of peace, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges within this realm, distant from any one of the ends of such bridges three hundred foot, and to do in every thing and things concerning the making, repairing, and amending of such highways, and every of them, in as large and ample manner, as they might and may do, to and for the making, repairing, and amending of bridges, by virtue and authority of this present Act."

The county is, by the common law, bound *primâ facie* to repair the road at the ends of every bridge, which bridge it is bound to repair; the above statute of 22 Hen. VIII. has fixed the length at three hundred feet. (*Per Lord Eldon, C., R. v. West Riding of Yorkshire, 5 Taunt. 284*; and see *R. v. West Riding of Yorkshire, 4 B. & Ald. 623.*) The reason why the county is thus bound to repair this addition to the bridge is, that it is considered as intimately connected with the bridge itself; and it is difficult to ascertain the precise limits of the bridge from the continuation of arches on each side of the river. (*R. v. West Riding of Yorkshire, 7 East, 588.*)

The inhabitants of a county in which a new bridge was built (before 20th March, 1836), within three hundred feet of an old bridge in another county, were held liable to repair such new bridge. (*R. v. Devonshire, 14 East, 477.*) The county of Devon is divided from the county of Dorset by the river Yarty, over which there is a bridge maintained by Dorset, the inhabitants of which, in course, under stat. 22 Hen. VIII. c. 5, maintained the road for three hundred feet on the Devonshire side from the bridge as part of such bridge. At the distance of one hundred and fifty feet from the bridge on the same side, the road about thirty years ago led through a ford occasioned by a small stream which runs into the Yarty; but about that time, in order to avoid the inconvenience of the ford, a smaller bridge was built over it by an individual, which having been generally used by the public ever since, was considered as having been adopted by the county. The smaller bridge having fallen into decay, and requiring repair, the inhabitants of Devon were called upon to repair it; which they objected to on the ground that being within three hundred feet of the former bridge over the Yarty, which was repairable by Dorset, the inhabitants of Devon were no more bound to repair the smaller bridge than they were the road for that distance before that bridge was built, though lying within the limits of their county. Whereupon this indictment was preferred against them for the non-repair of the smaller bridge, and a verdict passed for the crown. And upon a motion for a new trial Lord Ellenborough, C. J., said, "Each is a substantive bridge in a different county, and the new bridge cannot be considered as an appendage to the other. The statute of Hen. VIII. attaches equally on the inhabitants of each county in respect of its own bridge. It makes no difference that the new bridge was first built by an individual, if it were afterwards adopted by the public as of great public utility. While it continued a road, it was repairable as part of the old bridge; but now that there is a substantive bridge built on the Devonshire side, it is repairable as a bridge by the inhabitants of the county in which it is situate, according to the statute."

And see *R. v. Inhabitants of Gloucestershire, (1 C. & M. 506.)* which was the case of an indictment under the above Act, and in which it was considered by Cresswell, J., "That it was not material to the liability of the county whether the bridge was originally necessary for the convenience of the public or not."

It may be taken as a general rule that where any district, corporation, public body, or private individual, by prescription or tenure, is

4. Concerning the Ends of Bridges.

Common law liability to repair the roads at ends of bridges.

When others than county liable.

4. Concerning the Ends of Bridges.

liable to repair a bridge, it is an intendment of law, in the absence of any evidence to the contrary, that the liability extends to three hundred feet of the approaches at each end of the bridge. (*Reg. v. Lincoln, Mayor, &c.*, 2 N. & P. 273 ; 8 A. & E. 65.) And such presumption is not rebutted by proof that the party has been known to repair only the fabric of the bridge, and that the only repairs known to have been done to the highway have been performed by commissioners under a turnpike road Act. (*Ib.*)

A bridge originally built by subscription, in lieu of a foot bridge having become a public benefit, is chargeable on the county ; the highway, within the limits of three hundred feet at each end, is bound by the same rule of law with respect to it as the bridge itself, and the charge of the repairs of such highway, within such limit, belongs *prima facie* to the party charged with the repair of the bridge itself ; and if the inhabitants of a county be indicted for the non-repair thereof, they cannot exonerate themselves except by pleading specially that some other is bound by prescription or tenure to repair the same. (*West Riding of Yorkshire v. R.*, 5 Taunt. 284 ; 7 East, 588.)

If the bridge be on a turnpike road, and the county make default in repairing the three hundred feet at the end of a bridge built before the 20th March, 1836, perhaps the road trustees might be made liable to the repair. (See *Bussey v. Storey*, 1 N. & M. 639 ; 4 B. & Ad. 98.)

Where the road by which a bridge was approached passed between meadows which were occasionally flooded by a river, and for convenient access to the bridge a raised causeway had been made, having arches or culverts at intervals for the passage of the flood water, which were equally necessary to the safety of the main bridge and the causeway : it was held that the inhabitants of the county were not bound to repair such arches, being at the distance of more than three hundred feet from the end of the main bridge. (*R. v. Oxfordshire*, 1 B. & Ad. 289.)

Bridges built after 20th March 1836.
County not liable to repair roads leading to.

Bridges built after 20th March, 1836.—With respect to bridges to be built after the 20th March, 1836, the 5 & 6 Will. IV. c. 50, s. 21, (the “General Highway Act,”) enacts, “that if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways : provided nevertheless, that nothing herein contained shall or be construed to extend to exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof.”

Raised causeways, &c.

V. Manner, &c., of Repairs, Widening, Diverting, &c.

Manner of repairing.

Those who are bound to repair public bridges must make them of such height and strength as shall be answerable to the course of the water, whether it continues in the old channel or makes a new one. (1 Hawk. c. 32, s. 1.)

Entering lands.

Persons bound to repair county bridges may, by the common law if necessary, enter on any adjoining lands for such repairs, or lay thereon the requisite materials. (1 Hawk. c. 32, s. 1.)

Those who are bound to repair bridges are not necessarily bound by the common law to *widen* them, at least the county are not so bound. (*R. v. Devonshire*, 4 B. & C. 670; 2 N. & M. 212; *Cumberland v. Rex*, 3 B. & P. 354.) And no persons are compellable to *build*, or contribute to the *building* of any *new bridge*, without an Act of parliament; nor can the inhabitants of a county, by their own authority, merely *change* a bridge or highway from one place to another. (2 *Inst.* 700.) But the statutes 14 Geo. II. c. 33, s. 1, (a) and 43 Geo. III. c. 59, s. 2, allow the quarter sessions to compel the county to widen or change old bridges, or build new ones.

The following is the enactment of the 43 Geo. III. c. 59, s. 2, which incorporates and supplies many defects in the enactment of the 14 Geo. II. c. 33, s. 1: It enacts, "that where any bridge or bridges, or roads at the ends thereof, repaired at the expense of any county, shall be narrow and incommodious, it shall and may be lawful to and for the said justices, at any of their general quarter sessions, to order and direct such bridge or bridges, and roads, to be widened, improved, and made commodious for the public; and that where any bridge or bridges, repaired at the expense of any county, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said justices, at any of their said general quarter sessions, to order and direct the same to be rebuilt, either on the old site or situation, or on any new one more convenient to the public, contiguous to or within two hundred yards of the former one, as to such justices shall seem meet; and if, for the purpose of altering the situation, or of widening or enlarging any such bridge or bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, [or by stat. 54 Geo. III. c. 90, 'any building or buildings, or other erections,'] it shall and may be lawful for such county surveyor or surveyors, by and under the direction of such justices at their general quarter sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross or by an annual rent, at the option of such owner or owners; and if the said surveyor or surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompense to be made for the same, or by reason of such owner or owners not being to be found shall be prevented from treating, then and in every such case the said justices in their general quarter sessions shall impanel a jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this Act, in the same manner as they are authorized and empowered to do by the said above-mentioned Act of the thirteenth year of the reign of his present Majesty, in relation to highways; and all and every the clauses, powers, provisions, exemptions, penalties, matters and things in the said Act contained, as well with respect to impanelling juries, examining and swearing witnesses, payment of expenses, enabling bodies politic, corporate, and collegiate, and other incapacitated

5. *Manner,*
&c., of
Repairs, &c.

Widening.
Building a new.
Changing.

Sessions may
alter situation of
county bridges,

or widen,

or rebuild same.

May purchase
lands, buildings,
&c.

Not exceeding
an acre.

On disagreement
with owner a
jury to assess
compensation,

as under highway
Acts, (repealed
but re-enacted
5 & 6 Will. IV.
c. 50, s. 22).

(a) It was said by *Buller, J.*, in *R. v. Justices of Glamorganshire*, 5 T. R. 279, "As to the power of justices to change roads, by changing the local situation of a bridge, there certainly are old cases against it, and they were properly decided: because, previous to statute 14 Geo. II. c. 33, the sessions had no power to change the situation of bridges; but that Act

impliedly gives them that power, for it enables them to purchase lands adjoining any county bridge, for the more commodious enlarging and convenient rebuilding the same. This, therefore, impliedly gives them the power of altering the position of the bridge to suit the convenience of the public."

5. *Manner, &c., of Repairs, &c.*

Presentment to be first made.

Order discretionary.

Presentment.

Sessions may borrow money on county rates for the purpose of widening, &c., bridges.

Bridges in hundreds, &c.:

Pulling down old bridge before new one built (a).

persons, to sell and convey, and all other the powers and provisions of the said Act, shall be, and the same are hereby extended and applied to the works by this Act authorized to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if the same were herein particularly repeated and re-enacted; provided that no money shall be applied to the amendment or alteration of any such bridge or bridges, until presentment shall have been made of the insufficiency, inconveniency, or want of reparation of such bridge or bridges, in pursuance of some or one of the statutes made and now in force concerning public bridges." (See the other sections of this Act, *post*, 517.)

The words "it shall and may be lawful" leave it discretionary with the justices whether they will make the order for widening a bridge or not, as the propriety of widening a bridge depends on many other considerations besides the mere fact of the insufficient width of the bridge, such as the expense and the amount of benefit to the public, or to a particular portion of the public and other matters of expediency (*Re Newport Bridge*, 29 L. J. M. C. 52.)

The making of a presentment is a condition precedent to the order, and an indictment at common law is not the same thing as a presentment. (*Re Newport Bridge*, *ubi. sup.*)

By the 4 & 5 Vict. c. 49 (*post*, 527) justices at sessions are empowered to raise money on the credit of the county rates for altering, widening, repairing, improving, or re-building county bridges.

By 54 Geo. III. c. 90, s. 2, all the powers and provisions of the 43 Geo. III. c. 59, (except as to bridges hereafter to be erected,) are extended "as well to bridges and the roads at the ends thereof repaired by the inhabitants of hundreds and other general divisions in the nature of hundreds, as to bridges and the roads at the ends thereof repaired by the inhabitants of counties."

The justices of Dorset having, under stat. 43 Geo. III. c. 59, contracted for the building of a new bridge in a different site in lieu of the old one, which was ruinous; and having directed the old bridge to be taken down before the new one was passable, for the benefit of the old materials to be used by the contractor in finishing the new bridge; the Court of Queen's Bench refused a writ of prohibition to them to restrain them from pulling down the old before the new bridge was passable; though there were strong affidavits of the inconvenience and loss to be sustained by the neighbourhood in being obliged to use a roundabout way in the interval; referring the complaints to the ordinary remedy by indictment, if the pulling down the old bridge under these circumstances were a nuisance; and seeing no occasion to interfere by applying a prompt remedy of a novel kind in modern practice. *Bayley, J.*, there asked, "If the justices had not changed the site of the bridge, would they not have a right to use the materials of the old bridge in building the new one? Then can they be obliged to incur the additional expense of providing all new materials for the new bridge, because they have exercised the discretion given to them in changing it to another site?" (*R. v. Justices of Dorsetshire*, 15 East, 594.)

VI. Surveyors, Materials, &c., for Repairs, &c.

Appointing surveyors who are

By stat. 22 Hen. VIII. c. 5, s. 4, the justices of peace within the shires or ridings wherein such decayed bridges be out of cities and

(a) As to stopping up old highways before setting out the new one, see *post*, "Highways," Vol. II.

towns corporate; and if it be within cities or towns corporate, then the justices of peace within every such city, &c., or four of them at the least, (one of them being of the quorum,) within the limits of their commissions and authorities, shall have power to name and appoint two surveyors with salaries to see the bridges amended.

And this business of surveying the bridges, for the more convenience, is usually annexed by the justices to the office of the high constable: for which they have by this clause power to allow them salaries.

By 43 Geo. III. c. 59, s. 1, (called Lord Gower's Act,) surveyors of county bridges in England were empowered to get materials for the repair of county bridges and roads at the ends thereof, and to remove obstructions, in the same manner as surveyors of highways under stat. 13 Geo. III. c. 78. But the latter Act is expressly repealed by the 5 & 6 Will. IV. c. 50, and to maintain the effect of the enactment in the 43 Geo. III. c. 59, s. 1, the 5 & 6 Will. IV. c. 50, s. 22, re-enacts in nearly the same terms as follows: "that the several powers and authorities hereby vested in the surveyor of highways, as well for the getting of materials, as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges, and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters, and things in this Act contained relating to highways shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, the said surveyor or surveyors of county bridges making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act in such and the same manner as the surveyors of highways are required to make under the provisions of this Act." (See the various clauses of the 5 & 6 Will. IV. c. 50, as to these powers, *post* "*Highways in General*," Vol. II.)

By 43 Geo. III. c. 59, s. 3. "The right and property of all tools, implements, timber, bricks, stones, gravel, and other materials, purchased, gotten or had, or to be purchased, gotten or had by or by the order of justices in counties, or the surveyor of county bridges for the time being, or in any respect belonging to such counties, shall be and the same are hereby vested in such surveyor for the time being; in whom, upon any action or indictment being commenced or prosecuted, such property may be laid."

Sect. 4. "The inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expense of such counties respectively, and for the recovering of any property belonging to such counties, in the name of their surveyor, and also shall and may be sued in the name of such surveyor; and no action or prosecution to be brought or commenced by or against the inhabitants of counties, by virtue of this Act, in the name of the said surveyor, shall abate or be discontinued by the death or removal of such surveyor, or by the act of the surveyor, without the consent of the justices at their general quarter sessions assembled, but the surveyor for the time being shall be deemed the plaintiff or defendant in such actions, as the case may be: provided always, that every such surveyor in whose name any action or suit shall be commenced, prosecuted, or defended in pursuance of this Act, shall always be reimbursed and paid out of the monies in the hands of the treasurer of the public stock of such county respectively, all such costs and charges as he shall be put unto or become chargeable with by reason of his being so made plaintiff or defendant therein; and also all the costs and charges of prosecuting any indictment or indictments, or other proceedings, against any person or persons whomsoever."

Sect. 6. "All orders and proceedings made and had within the county of York, relative to county bridges, shall in future be made and had by the justices of the respective ridings assembled at the annual and general quarter sessions of the peace holden the first whole week after

6. Surveyors, Materials, &c.

usually the high constables.

43 Geo. III. c. 59.

Powers for getting materials and preventing nuisances &c., contained in the General Highway Act, to extend to county bridges and roads at the ends thereof.

Tools and materials, &c., vested in surveyor.

Actions for damages to bridges, or for property of county, to be in name of surveyor.

Surveyor indemnified.

Orders respecting bridges in Yorkshire to be made by sessions held first week after Easter.

**6. Surveyors,
Materials, &c.**

Easter, and at no other sessions whatever within such ridings, except at such adjournment as shall be made at the above annual and general quarter sessions so holden as aforesaid, for the express purpose of carrying such orders made as aforesaid into effect; provided nevertheless, that it shall and may be lawful for any two justices of the said ridings respectively, in cases of emergency, to give such orders for making temporary bridges, or such temporary repairs as shall be necessary for the temporary accommodation of the public."

Act not to extend to bridges repaired by reason of tenure, &c.

These provisions extended to bridges in hundreds, &c.

Sect. 7. "Nothing herein contained shall extend to any bridges or roads which any person or persons, bodies politic or corporate, is, are, or shall be liable to maintain or repair by reason of tenure or by prescription, or to alter or affect the right to repair such bridges or roads."

Stat. 54 Geo. III. c. 90, s. 2, recites, "And whereas it is expedient that the provisions of the said Act, except as after mentioned, should be extended to bridges repaired by the inhabitants of hundreds and other general divisions of counties;" and enacts, "that the said Act and all the powers and provisions of stat. 43 Geo. III. c. 59, (except as to bridges hereafter to be erected,) are extended 'as well to bridges and the roads at the ends thereof repaired by the inhabitants of *hundreds, and other general divisions in the nature of hundreds,* as to bridges and the roads at the ends thereof repaired by the inhabitants of counties.'"

Power to obtain materials from quarries.

Surveyors and persons employed under contracts empowered to take stones for repair of county bridges.

Consent and order of two justices necessary.

Quarries in gardens, &c. not to be used without consent of owners.

Satisfaction to be made for stone, and damage done.

By stat. 55 Geo. III. c. 143, s. 1, (a) after reciting the provisions of 43 Geo. III. c. 59, s. 1, and 54 Geo. III. c. 90, above noticed, and that "it is expedient that surveyors of county bridges and other persons, being under contract for the rebuilding or repairing such bridges, or bridges repaired by the inhabitants of hundreds and other general divisions of counties in the nature of hundreds, should have a more extended power for procuring materials than is at present vested in such surveyors of county bridges, by the operation of the said first recited Act, 'so far as relates to the procuring of stone for such purposes from quarries;' it is enacted, "that it shall and may be lawful to and for every surveyor of such bridges in each and every county within that part of the United Kingdom called England, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county; and also to and for the bridge master or all and every persons or person who may at the passing of this Act, or from and after the passing thereof, be under contract for the rebuilding or repairing of any public bridge, built or repaired at the expense of the inhabitants of any such county, hundred, or general division as aforesaid; and such surveyor and surveyors and also such other person or persons, are hereby authorized and empowered, with the consent and by the order of two justices of the peace, acting for the county in which such bridge is intended to be rebuilt or repaired, first had and obtained for that purpose, to search for, work, dig, get and carry away any stone, in, from or out of any quarry or quarries whatsoever, within the county or counties to which such bridge may belong; other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or as may now or hereafter have ornamental timber trees growing thereon, without the license or consent of the owner or owners of such quarry or quarries, as such surveyor or other person or persons shall judge necessary for the rebuilding or repairing of such bridges respectively, provided such quarry or quarries shall have been worked within the last three years preceding the time when such bridge shall be about to be rebuilt or repaired; the said surveyor or other person or persons making such

(a) This enactment does not seem affected by the 5 & 6 Will. IV. c. 50, s. 21, *ante*, 514, for the 13 Geo. III.

c. 78, s. 81, contained similar powers to those contained in s. 54 of the 5 & 6 Will. IV.

satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry or quarries by the getting and carrying away the same, as shall be agreed upon between him or them and the owner, occupier, or other person interested in such quarry or quarries respectively; and in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then and in every such case the justices of the peace at their general or quarter sessions, or any two or more of them appointed for that purpose, fourteen days' notice having been given to the owner or his agent of the intention to require a jury, shall cause the value of such stones and amount of such damage to be inquired into and ascertained by a jury of indifferent men of the county, riding, division, city, town, liberty, or precinct wherein the same shall be situated: and to that end shall summon and call before such jury and examine upon oath (which oath any two or more of such justices of the peace is and are hereby empowered to administer) any person or persons whomsoever; and such justices of the peace, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have inquired of and ascertained the value of such stones and amount of such damage, the said justices of the peace shall thereupon order that the sum or sums, which shall so appear to be the value of such stones and amount of such damage shall be paid; which verdict or inquisition and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the said county, riding, division, city, town, liberty, or precinct, and shall be final and conclusive to all intents and purposes whatsoever, against all parties and persons whomsoever claiming or to claim in possession, remainder, reversion, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attorneys, or any person or persons whomsoever."

Sect. 2. "And for the summoning and returning such juries, it is further enacted, that such justices of the peace, or any two of them, may issue their warrant or warrants to the sheriff or bailiff of any particular county, riding, division, city, town, liberty, or precinct, within the limits of which the quarry or quarries shall be situated, requiring him to impanel, summon and return an indifferent jury of twenty-four persons qualified to serve on juries to appear before the said justices, or any two of them, at such time and places as in such warrant or warrants shall be appointed; and such sheriff or bailiff is and are hereby required to impanel, summon and return such number of persons accordingly; and out of the persons so impanelled, summoned and returned, or out of such of them as shall appear upon such summons, the justices of the peace, or any two of them, shall, and they are hereby empowered and required to draw by ballot, and to swear or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or bailiff shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, to make up the number of twelve; and all persons concerned shall have their lawful challenges against any of the said jurymen when they come to be sworn; and the said justices of the peace, or any two of them, shall have power from time to time to impose a fine or fines on such sheriff or bailiff, or his deputy or deputies, making default thereof in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or, appearing, shall refuse to be sworn on the said jury, or being sworn, shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who, being summoned and required to give evidence before the said jury, shall

6. *Surveyors, Materials, &c.*

On refusal to treat, sessions to cause value of stones and amount of damage to be ascertained by a jury.

Witnesses before jury may be examined on oath.

View.

Payment of verdict.

Verdict of jury to be filed with clerk of peace.

Verdict final.

Justices may require sheriffs or bailiffs to return juries.

Jury.

Jury refusing to appear or be sworn.

Witnesses refusing to give evidence.

6. *Surveyors, Materials, &c.* refuse or neglect to appear, or, appearing, shall refuse to be sworn or to give evidence, so that no such fine be more than ten pounds, nor less than twenty shillings on any one person for one offence."

Expenses of jury,
how defrayed.

Sect. 3. "In case any jury shall give in and deliver a verdict for more money, as the value of such stones and amount of such damage, than what shall have been offered for the purchase thereof by such surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the rates to be collected within such county respectively; but if such jury shall give in and deliver a verdict for no more, or for less money, than the money which shall have been so offered by such surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said justices by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof."

Appeal (a).

Sect. 4. "If any person or persons shall or may think himself, herself, or themselves aggrieved by any thing done or to be done in pursuance of this Act, such person or persons may, within the space of three calendar months next after the cause of complaint shall have arisen, appeal to the justices of the peace at any general quarter sessions of the peace to be holden for the limit wherein the cause of complaint shall arise; every such appellant first giving or causing to be given fourteen days' notice (a) at least in writing, of his or her intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within three days next after such notice entering into a recognizance before some justice of the peace acting for the county wherein the cause of complaint shall arise, with two sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the justices at such session aforesaid; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against, as the said justices shall think proper; and the determination of such justices so assembled shall be binding and conclusive to all intents and purposes."

Notice of.

Recognizance.

Justices to determine matter
of appeal.

Tolls of materials
for repairs.

By stat. 3 Geo. IV. c. 126, s. 32, (*post*, "*Highways, Turnpike*," Vol. II.) materials for the repairs of bridges carried along a turnpike road are exempted from toll. (See *Osmond v. Widdicombe*, 2 B. & Ald. 49.)

VII. Assessments and Contracts for Repairs, &c.; Expenses of, &c.

Assessments, &c.

Assessments for Repairing, &c.—The mode of taxing and collecting the monies necessary for the repairs of bridges, and the highways at the ends thereof, was regulated in the first instance by 22 Hen. VIII. c. 5, and afterwards by the 1 Anne, stat. 1, c. 18, and the 12 Geo. II. c. 29, s. 1.

(a) As to appeals in general, and the requisite notice and recognizance, see *ante*, "*Appeal*."

By the 22 Hen. VIII. c. 5, s. 4, "in every such case (*ante*, 516,) where it cannot be known and proved what persons, lands, tenements and bodies politic owe to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of peace within the shires or ridings wherein such decayed bridges been out of cities and towns corporate, and if it be within cities or towns corporate, then the justices of peace within every such city or towns corporate, or four of the said justices at the least, whereof one to be of the *quorum*, shall have power and authority within the limits of their several commissions and authorities, to call before them the constables of every town and parish being within the shire, riding, city, or town corporate, as well within liberty as without, wherein such bridges or any parcels thereof shall happen to be, or else two of the most honest inhabitants within every such town or parish in the said shire, riding, city, or town corporate, by the discretion of the said justices of peace, or four of them at the least, whereof one to be of the *quorum*, and at and upon the appearance of such constables or inhabitants the said justices of peace or four of them, whereof one to be of the *quorum*, with the assent of the said constables or inhabitants, shall have power and authority to tax and set every inhabitant in any such city, town or parish within the limits of their commissions and authorities, to such reasonable aid and sum of money as they shall think by their discretions convenient and sufficient for the repairing, re-edifying and amendment of such bridges, and after such taxation made, the said justices shall cause the names and sums of every particular person so by them taxed to be written in a roll indented, and shall also have power and authority to make two collectors of every hundred, for collection of all such sums of money by them set and taxed, which collectors, receiving the one part of the said roll indented, under the seals of the said justices, shall have power and authority to collect and receive all the particular sums of money therein contained, and to distrain every such inhabitant as shall be taxed and refuse payment thereof in his lands, goods and chattels, and to sell such distress, and of the sale thereof retain and perceive all the money taxed, and the residue (if the distress be better) to deliver to the owner thereof, and that the same justices or four of them, within the limits of their commissions and authorities, shall also have power and authority to name and appoint two surveyors, which shall see every such decayed bridge repaired and amended from time to time, as often as need shall require, to whose hands the said collectors shall pay the said sums of money taxed and by them received; and that the collectors, and surveyors and every of them, and their executors and administrators of them and every of them, from time to time shall make a true declaration and account to the justices of peace of the shire, riding, city, or town corporate wherein they shall be appointed collectors or surveyors, or to four of the same justices, whereof one to be of the *quorum*, of the receipts, payments and expenses of the said sums of money; and if they or any of them refuse that to do, then the same justices of peace or four of them, from time to time, by their discretions, shall have power and authority to make process against the said collectors and surveyors, and every of them, their executors and administrators, and the executors and administrators of every of them, by attachments under their seals, returnable at the general sessions of the peace, and, if they appear, then to compel them to account as is aforesaid, or else if they or any of them refuse that to do, then to commit such of them as shall refuse to wards, there to remain without bail or mainprize till the said declaration and account are truly made."

Sect. 6. "Provided always, that this Act or any thing therein contained be not prejudicial to the liberties of the five ports or members of the same; and for reformation of annoyances of bridges within the said ports and members."

Sect. 8. "The justices of peace or four of them shall have full power

7. Assessments, &c.

Justices may call together the constables, &c.;

and with their assent may tax the inhabitants;

may make two collectors of every hundred.

Distress, &c.

May make two surveyors;

who shall repair the bridge, &c.

Collectors and surveyors shall account to the justices

or may be committed.

The five ports excepted.

Allowance made to surveyors and collectors.

7. *Assessments, &c.*

and authority to allow such reasonable costs and charges to the said surveyors and collectors as by their discretions shall be thought convenient."

22 Hen. VIII.
c. 5, concerning
the amending of
bridges further
continued.

By the 1 Anne, st. 1, c. 18, after reciting, "Whereas by an Act of parliament in the two-and-twentieth year of the reign of King Henry the Eighth, intituled 'An Act concerning repairing and amending of bridges in the highways,' it is amongst other things therein enacted, that in every case where it cannot be known and proved that persons, lands, tenements and bodies politic ought to make and repair such bridges, that for speedy reformation and amending of such bridges the justices of the peace within their several counties, shires, ridings, divisions, cities and towns corporate, or any four of them, whereof one to be of the *quorum*, shall within the limits of their several commissions call before them the constables of every town and parish, or else two of the most honest inhabitants of every town and parish, and with the assent of the said constables or inhabitants, shall tax and set every inhabitant in such city, town and parish to such reasonable aid and sums of money as they shall think by their discretions convenient, for the repairing of such bridges, and after such taxation made shall cause the names and sums of every particular person so by them taxed to be written in a roll indented, one part whereof is to be delivered, under the hands and seals of the said justices, to two collectors appointed by the said justices for every hundred, who are thereby empowered to collect the same, which method and manner of taxing and collecting the said money for repair of decayed bridges and the highways thereunto adjoining, having by long experience been found very troublesome, burthensome and chargeable to the several counties, cities, towns corporate, ridings, and divisions: and whereas in many places within this kingdom more money than is necessary for the repair of such bridges hath been taxed and collected, or the money, which hath been so taxed and collected hath been misemployed, and not laid out in the repair of such bridges as was intended; for remedy of all which mischiefs and inconveniences for the future, it is enacted, that all and every the clauses, matters and things in the said Act of the two-and-twentieth year of the reign of the said King Henry the Eighth not hereby altered shall be and continue in full force and virtue, to all intents, constructions, and purposes whatsoever, relating to the repairing of decayed bridges and the highways thereunto adjoining."

For collecting
money for repair
of decayed
bridges justices
of peace may
assess every
town, &c., in
proportion.

Sect. 2. "For the more easy taxing and collecting of the money for the repair of decayed bridges, and that the same may be duly applied to the purposes for which it is intended, the justices of the peace within the several limits of their commissions, shall at their general or quarter sessions of the peace, from and after the first day of May which shall be in the year of our Lord 1702, have full power and authority, upon due presentment to them made, that any bridge within their respective commissions or authorities is out of repair, and which by them hath usually or ought to have been repaired and maintained, to assess upon every town, parish or place within their respective commissions, in proportions upon respective town and parish as they usually have been assessed, towards the repair of bridges; which money so assessed as aforesaid shall be levied and collected by the respective constables of each parish, township, hamlet or vill, or by such other person and persons, and in such manner as the said justices by their order at such sessions shall in that behalf direct and appoint, and the money thereby raised shall (by such constables or other persons so as aforesaid by them collected) be paid over by them to the high constables of every hundred in any such county, city, riding, or division, in six days after they shall have received the same, and the high constables shall and are hereby required, in ten days after their receipt, to pay the same into the hands of such person and persons as the said justices by their order

Assessment, how
to be levied, &c.

Treasurer to be
appointed, and
monies how
employed.

at such sessions shall direct and appoint to be treasurers and receivers of the same, and the money thereby raised shall be employed and accounted for according to the orders and directions of the said justices for and towards the amending of such decayed bridges and the highways at the end of the said bridges, from time to time as need shall require; and the said assessments shall be levied by distress and sale of the goods of every person so assessed not paying the same within ten days after demand, rendering the overplus of the value of the goods so distrained to the owner and owners thereof, the necessary charges of making and selling such distress being first deducted."

7. *Assessments, &c.*

On nonpayment, to be levied by distress.

Sect. 3. "And to the end that the money which is hereby intended to be assessed and levied may be duly collected, paid and applied to the several purposes for which it is intended, it is enacted, that every high constable, churchwarden, overseer of the poor or petty constable, or other person that shall neglect to assess, collect or pay the money hereby intended to be raised as is hereinbefore directed, shall for every such offence forfeit the sum of forty shillings, and every treasurer that shall pay any money but by order of such justices of the peace at such sessions (which order the said justices are hereby required and commanded to make only for the building, repairing or amending such bridges and the highways at the end of such bridges as aforesaid) shall for every such offence forfeit the sum of five pounds."

Penalty on constable.

Sect. 6. "The said justices of the peace at such general quarter sessions as aforesaid shall have full power and authority to allow such persons concerned in the execution of this present Act any sum not exceeding threepence in the pound."

Justices to allow &c. in the pound, &c.

Sect. 7. "If any action or suit shall be hereafter commenced or prosecuted against any person or persons by this Act authorized to put the same in execution, every person or persons so sued may plead the general issue, and give this Act, or the said recited Act made in the two-and-twentieth year of the reign of King Henry the Eighth, and the special matter in evidence; and if the plaintiff shall become nonsuit or forbear further prosecution, or suffer discontinuance, or if a verdict pass against him or her, the said defendant and defendants shall recover his and their double costs, for which he and they shall have the like remedy as in cases where costs by law are given to defendants." But now by the 5 & 6 Vict. c. 97, s. 2, the defendant shall have such costs taxed to him as will fully indemnify him. (See "*Justices*," Vol. III.)

General issue

Double costs,

Sect. 8. "Provided always, that this Act nor any thing therein contained shall excuse or discharge any particular persons, estates or places from repairing any bridge which they have heretofore usually repaired."

Persons and things exempted.

Sect. 9. "All the penalties and forfeitures incurred by this Act shall be applied towards the repairing the said bridges and highways at the ends of the same."

Penalties, how to be levied.

By 12 Geo. II. c. 29, s. 1, the charges of *repairing and amending* bridges and highways at the ends of bridges, shall be paid out of the general county rate.

Expenses payable out of county rates.

Sect. 13. "And be it further enacted by the authority aforesaid, that no part of the money to be raised and collected in pursuance of this Act shall be applied to the repair of any bridges, gaols, prisons or houses of correction, until presentments be made by the respective grand juries, at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconvenience or want of reparation of their bridges, gaols, prisons, or houses of correction."

Sect. 14. "That from and after the first day of June, one thousand seven hundred and thirty-nine, when any public bridges, ramparts,

Sessions may contract for repairs.

7. Assessments, &c.

Contractor to give security.

Notice for contracts.

Contract to be a fair price.

Contracts to be entered in book kept by clerk of peace.

banks or cops, or other works, are to be repaired at the expense of any county, city, riding, hundred, division, liberty or town corporate, it shall and may be lawful to and for the justices of the peace at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment (a) to be made as aforesaid of the want of reparation of such bridges, ramparts, banks or cops, to contract and agree with any person or persons for rebuilding, repairing and amending of such bridges, ramparts, banks or cops, as shall be within their respective counties, cities, ridings, hundreds, divisions, liberties or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, liberties or towns corporate, for any term or terms of years, not exceeding seven years, at a certain annual sum, payment or allowance for the same; such contractor or contractors giving sufficient security for the due performance thereof, to the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any county, town corporate or liberty; and that such justices at their respective general or quarter sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the bridges, ramparts, banks or cops, and other works aforesaid; and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book, to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff or chief officer of any city, town corporate or liberty for that purpose; who is and are hereby required to keep them amongst the records of such county, city, town corporate or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions; and by any person or persons employed or to be employed by any parish, township or place, contributing to the purposes of this Act, without fee or reward."

Reciting 12 Geo. II. c. 29, &c.

County bridges repaired under contract may be repaired without presentment.

By 52 Geo. III. c. 110, s. 1, reciting, that by stat. 12 Geo. II. c. 29, "No part of the money to be raised and collected in pursuance of this Act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective grand juries at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace, held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconvenience, or want of reparation of their bridges, gaols, prisons, or houses of correction; and it is further enacted, that from and after the 1st day of June, 1739, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expense of any county, city, riding, hundred, division, liberty or town corporate, it shall and may be lawful to and for the justices of the peace at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks or cops, as shall be within their respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, for any term or terms of years not exceeding seven years, at a certain annual sum, payment or allowance for the same, such contractor

(a) But now this presentment is unnecessary, 52 Geo. III. c. 110, s. 1, *infra*.

or contractors giving sufficient security for the due performance to the respective clerk of the peace for the time being, or the town clerk, high bailiff or chief officer of any city, town corporate, or liberty; and that such justices at their respective general or quarter sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the bridges, ramparts, banks or cops, and other works aforesaid, and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate or liberty, for that purpose, who is and are hereby required to keep them amongst the records of such county, city, town corporate or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions, and by any person or persons employed or to be employed by any parish, township, or place, contributing to the purposes of this Act, without fee or reward: and whereas great expense in the repairs of county bridges, ramparts, banks, cops, and other works appertaining to the same, and of the roads over the same, and of so much of the roads at the ends thereof as by law is to be repaired at the expense of any county, riding, hundred, division, liberty or town corporate, and great inconvenience to the public may be often in a great measure prevented by the timely and immediate repair of any inconsiderable damage, injury, defect, or sudden want of repair or amendment of the same, without the delay which must generally arise from the necessity imposed by the aforesaid Act, of a presentment by the grand jury at the assize, great sessions, or general or quarter sessions of the peace held for any county, city, riding, division, town corporate or liberty, of the want of reparation of the same; by means of which delay the aforesaid want of repair is often very much increased, to the great expense of the county and great inconvenience of the public: and whereas it is also expedient that the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions respectively, before any presentment shall have been made as aforesaid, as directed by the aforesaid Act, of the want of repair of such roads, should be enabled without any such presentment to contract and agree with certain persons hereinafter mentioned, for the repairing and amending of the same; and also for keeping the same in repair when so repaired and amended;" it is enacted, "that from and after the 1st day of July, 1812, it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions or great sessions respectively, to be holden in the week next after the clause of Easter, or the greater part of them then and there assembled, to appoint annually two or more justices of the peace acting in and for any division of justices in such county, city, riding, division, town corporate or liberty, in or near which any such county bridge, or any bridge which is in part a county bridge, ramparts, banks, cops or other works appertaining to the same, or any part or parts thereof, or the roads over the same, or so much of the roads at the ends thereof as by law is to be repaired at the expense of any county, city, riding, division, town corporate or liberty shall be situate, to superintend the same, and whenever it shall appear on their own inspection to be necessary for the purpose of preventing the further decay and injury of the same, to order any immediate repairs or amendments to be done to the same or to any part thereof; but it shall and may be lawful for any two such justices so to be appointed as aforesaid, and any two such justices are hereby empowered by a written order, (a) signed by their hands respectively,

7. Assessments, &c.

Sessions may appoint annually two justices near to superintend roads and bridges.

Who may order repairs.

(a) See form (No. 1) *post*, 539.

7. Assessments, &c.

And they may
expend 20*l.* (a)
How long the two
justices to remain
in office.

Quarter sessions
to order payment
for repairs.

Not exceeding
10*l.*

A certificate to
be signed by two
of the said
justices.

Justices may
contract for
repairs.

to order such immediate repairs to be done by such person or persons as to them shall seem fit and proper : provided, that in no case the sum to be expended by them in such repairs shall exceed the sum of twenty pounds ; (a) and further, that such appointments of such justices as aforesaid shall remain in force until one week after the following Easter sessions respectively ; and that in case of the death of, or removal of, or refusal to act by any such justice or justices so appointed as aforesaid, the said court of general quarter sessions or great sessions may at any other of the four quarterly sessions appoint any other justice or justices to act for the remainder of the then current year, in the place of any such justice or justices so dying, removing, or refusing to act as aforesaid."

Sect. 2. "It shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty, at the general quarter sessions or great sessions which shall next happen after such repairs so ordered to be made by such justices so appointed as aforesaid shall be completed, or the greater part of them then and there assembled, to order the payment of such sum or sums of money, not exceeding ten pounds, (a) as shall be sufficient to pay for such repairs, to be made out of the county rate, to such person or persons who shall have so repaired the same by such order of such justices as aforesaid, although no presentment shall have been made by any grand jury at the assize, great sessions, or general quarter sessions of the peace of any county, city, riding, division, town corporate or liberty in which such repairs shall have been done, of the want of such reparation, as by the said Act of the twelfth year of his late Majesty King George the Second, above recited, was directed : provided nevertheless, that before such payment be ordered to be made as aforesaid, a certificate (b) be returned to such justices of the peace so assembled at such last mentioned sessions, signed by two at the least of such justices so appointed as aforesaid, who shall have so ordered such repairs as aforesaid, stating the nature of such repairs, and the defects, damage or injuries, which they had so ordered to be repaired, and their reason for so ordering such immediate repairs as aforesaid : provided also, that such justices of the peace, so assembled as last aforesaid, be satisfied by the parties concerned, that the charges made by them for such repairs are reasonable and just."

Sect. 5. "From and after the 1st day of July, 1812, it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions respectively, or the greater part of them then and there assembled, if they shall think proper and convenient, to contract and agree with the commissioner or commissioners, trustee or trustees, of any turnpike road within the said county, city, riding, division, town corporate or liberty, or with their surveyor or clerk, or with both their surveyor and clerk, or with the surveyor or surveyors of the highway of any parish, place or tything within the said county, city, riding, division, town corporate or liberty respectively, or with any other person or persons, for the maintaining and keeping in repair roads over any county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of any such county, city, riding, division, town corporate or liberty, or any part of the same, for any term not exceeding seven years, nor less than one, although no presentment shall have been made as directed by the said recited Act of the twelfth year of his late Majesty King George the Second, of the insufficiency, inconveniency, decay or want of repair of the same ; subject however to all the rules, restrictions, regulations, directions, and conditions, required by the above recited Act in

(a) See now the 55 Geo. III. c.
143, s. 5, *post*, 527.

(b) See form (No. 2), *post*, 539.

case where the same shall have been presented or directed by that Act."

7. Assessments, &c.

By stat. 55 Geo. III. c. 143, s. 5, reciting, that "It is expedient that the powers contained in an Act passed in the forty-third year of his present Majesty, intituled, 'An Act for remedying certain defects in the laws relative to the building and repairing of county bridges, and other works maintained at the expense of the inhabitants of counties in England,' for authorizing the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter session of the peace, to contract for maintaining and keeping in repair roads over county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of counties, although no presentment shall have been made of the want of repair, as directed by an Act passed in the twelfth year of his late Majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting and levying of county rates,' should be extended to the bridges as well as to the roads at the end thereof;" it is enacted, "That from and after the day of passing this Act, it shall and may be lawful to and for the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions respectively, to contract or agree, or to authorize any other person or persons to contract and agree, with any person or persons, for the maintaining and keeping in repair any county or hundred bridge, and the road over such county or hundred bridge, and so much of the roads at the ends thereof as are by law liable to be repaired at the expense of any such county, hundred, city, riding, division, town corporate or liberty, or any part of the same; and the said justices are hereby empowered to order such sum or sums of money as may be contracted for and agreed to be paid for the repairing, amending, and supporting such bridges, and the roads over the same, or the ends thereof, to be paid (in cases where the county is liable to the repair thereof) by the treasurer of the county out of the county rate, or (in cases where the hundred is liable to the repair of the same) by the bridge-master (or other public officer charged with the repair of bridges) of the hundred by which such bridge is liable to be repaired, for any term not exceeding seven years nor less than one, although no presentment of the insufficiency, decay or want of repair of the same shall have been made, and although no public notice shall have been given by the said justices, at their respective general or quarter session, of their intention to contract for the repair of such bridges, or the roads at the ends thereof, as respectively directed by the said Act of the twelfth year of his late Majesty King George the Second: provided nevertheless, that before any such contract shall be made, the said justices shall cause notices to be given in some public paper circulated, in such county, city, riding, hundred, division, town corporate or liberty of their intention to contract."

By this statute it will be seen that justices may now without indictment or presentment order repairs to any county or hundred bridges to any extent. (See 1 *B. & Ald.* 317.)

By the 4 & 5 Vict. c. 49, intituled "An Act to provide for repairing, improving, and rebuilding county bridges," (21st June, 1841,) reciting that "The expense of maintaining, altering, widening, repairing, improving, and rebuilding county bridges and approaches thereto, is in some instances considerable, and it is expedient that the money required for that purpose should, in certain cases, be borrowed on security of the county rate; it was therefore enacted, that when it shall appear to the justices assembled at any general or quarter sessions of the peace to be holden at any time after the passing of this Act in any county, riding or division in England or Wales, that the amount of any estimate approved by the said justices for the upholding, maintaining, supporting,

55 Geo. III. c. 143.

Further regulations enabling justices to contract for repairs.

Sessions may contract for repairs, &c., to any extent.

May order sum contracted for to be paid by county treasurer out of county rate.

Without presentment.

What notice to be given.

4 & 5 Vict. c. 49.

Justices at sessions may borrow money for repairing county bridges on the credit of the county rate.

7. Assessments, &c.

Justices may agree with persons for loans.

Copies of agreements to be kept by the clerk of the peace.

Justices may charge the county rate with interest on the money borrowed, and such further sum as shall insure the re-payment thereof in fourteen years.

Books to be kept of receipts and payments.

altering, widening, repairing, improving, or rebuilding of any county bridge or bridges, or the approaches thereto, or the land arches connected therewith, which any county is legally bound to repair and maintain, shall exceed one-fourth of the amount of the ordinary annual assessment for the rate of any county, riding or division, (such ordinary assessment to be taken on an average of such rate for the last seven years preceding,) it shall be lawful for the justices in quarter sessions assembled from time to time to borrow and take up on mortgage of such rate, by instrument in the form contained in the schedule to this Act annexed marked (A.), (see this form, *post*,) or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than fifty pounds each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for the justices so assembled and they are hereby authorized to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement, signed by the chairman and two or more other justices present at the time of making such order, shall be and the same is hereby declared to be effectual for securing every sum of money so advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such agreements shall be stipulated; and copies or extracts of all such agreements shall be kept by the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered, by endorsing his name on the back of such security, to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties*; and the person to whom such security, or any such assignment thereof, shall be made, and his executors, administrators and assigns, shall be creditors upon the said rate, in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced."

Sect. 2. "That it shall and may be lawful for the said justices and they are hereby authorized and required to charge the rate to be raised upon such county, riding, or division, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same; and such sums shall be assessed on the county, riding, or division, in such manner as county rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of the justices, in discharge of the interest and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the justices shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and such justices shall also and are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due, and the book or books so adjusted and settled to deliver into Court at any general or quarter sessions to be held for such county, riding or division; and the justices shall also and they are hereby required at every such sessions carefully to inspect all such accounts, and to make orders for carrying the purposes of this Act into

execution, in such manner as to them shall seem meet; and the justices so assembled in sessions as aforesaid shall direct in what order such securities shall be discharged by drawing lots or otherwise, as they shall think fit, taking care to discharge, in the first place, all such securities as shall bear the highest rate of interest."

Sect. 3. "Provided always, that the justices shall not make any order for the borrowing money upon mortgage of the rate for any of the purposes aforesaid, unless a notice in writing of the intention to make the application, signed by two at least of the justices usually acting in and for the division within which the bridge in question is situated, shall have been given to the clerk of the peace four weeks previous to the holding of the sessions at which such application is intended to be made, and shall also have been published in the newspaper or newspapers in which notice of holding the quarter sessions is usually published, together with such last-mentioned notice."

Sect. 4. "That an Act passed in the sixth year of the reign of his Majesty King George the Fourth, intituled, 'An Act to enable Justices of the Peace in England, in certain cases, to borrow money on mortgage of the rate of the county, riding, or place for which such Justices shall be then acting,' and the several clauses, powers and provisions in the said recited Act contained relating to the paying off of any debt or debts, and the borrowing of any money for such purpose, shall and may be applied in the paying off any money borrowed under the provisions or for the purposes of this Act, as fully and effectually as if such clauses, powers, and provisions were repeated and re-enacted in this Act."

7. Assessments, &c.

Notice to be given of borrowing money on mortgage of the county rate.

Powers of 6 Geo. IV. c. 40, applied to this Act (a).

SCHEDULE TO WHICH THE 4 & 5 VICT. c. 49, ante, 528, REFERS.

"WE, A.B. one of her Majesty's justices of the peace, and chairman of the Court of quarter sessions of the peace holden at _____ on the _____ day of _____ for the county, &c. of _____ [as the case may be], C.D. and E.F. Esquires, two other of her Majesty's justices of the peace acting for the said county, &c., and assembled in the same court, in pursuance of the powers to us given by an Act passed in the fourth year of the reign of her Majesty Queen Victoria, intituled, &c. [insert the title of this Act] do hereby in open court mortgage and charge all the rates to be raised within the said county, &c. [as the case may be] under the description of county rates, by the laws now in being, with the payment of the sum of _____ which G. H. of _____ hath proposed and agreed to lend, and hath now actually advanced and paid, towards defraying the expenses of upholding, maintaining, supporting, altering, widening, repairing, improving, or rebuilding [as the case may be] a certain county bridge at _____ or certain county bridges at _____ and _____ [as the case may be] in the said county and the approaches thereto [as the case may be] in the said county, &c., and we do hereby assign the same unto the said G. H., his executors, administrators, and assigns, for securing the payment of the sum of _____ and interest for the same after the rate of _____ per centum per annum, and do order the treasurer for the said county, &c., or other person [as the case may be] to pay the interest of the said sum of _____ half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act."

Form of mortgage of county rates.

The sessions are not authorized to order the payment by the bridge-master to the clerk of the peace of a per-centage on all money to be raised for the repair of bridges in a particular district in lieu of all his fees for indictments, presentments, &c., for bridges within it, although such per-centage was claimed as an ancient fee, and had been paid without dispute for a long period of time. (*R. v. Houldgrave*, 1 B. & Ald. 312.) Lord Ellenborough, C. J.: "I accede fully to the doctrine laid down by Lord Kenyon, in the case of *R. v. Essex*, (4 T. R. 591,) that

Power of sessions to reimburse fees of clerk of peace.

(a) See this Act, tit. "Gaols," Vol. II.

7. Assessments, &c.

wherever a duty is imposed on a county, and where costs incidentally and necessarily arise in questioning the propriety of acts done to enforce that duty, the magistrates who have the superintendence over the county purse have necessarily a right to defray such expenses out of the county stock. It is therefore quite clear, that in this case the magistrates had a jurisdiction over the subject-matter. They had a full right to order these expenses to be defrayed out of the county stock; but the question is, whether they had a right to make that order in these terms. It is not necessary for us to say whether the order is bad in point of form, as being on the bridgemaster and directing him to pay this money absolutely, and not out of such funds as may at the time be in his hands, for I think it cannot be supported on another ground. The magistrates had no authority to make an accumulated compensation of this nature to the clerk of the peace; their duty was at the end of each year to ascertain how much business had been done by him and what sum was due for it; but here they have, instead of taking the items of his bill division, substituted a sort of average computation. They have in this order directed the bridgemaster to pay an ancient and accustomed fee of one shilling in the pound on all the money raised in lieu of all the fees due to him upon all business relating to the indictments and presentments for not repairing bridges and roads in this hundred. Now how can that be for a moment considered as an award by them to him of a fair compensation for his trouble? It does not depend on his trouble, and is not more or less in proportion to it; then this court, seeing that the magistrates have here adopted an improper and illegal rule for computing the amount of this compensation, can do no otherwise than quash this order, which is founded on that computation."

Contracts for repairs of bridges not repairable by county.

By the General Turnpike Act, 3 Geo. IV. c. 126, ss. 107, 108, for the better amendment of bridges which are not repairable by the county, counties are empowered to contract and compound for the repair of such bridges. See the Act, *post*, "*Highways, Turnpike*," Vol. II.

Contracts, &c., for widening, diverting, or building new bridges.

Widening, Diverting, or Building New Bridges.—By the provisions contained in the 14 Geo. II. c. 33, s. 1; 43 Geo. III. c. 59, s. 2; and 54 Geo. III. c. 90, s. 1, the quarter sessions may contract for the purchase of lands, buildings, and other erections, for the purpose of widening, diverting, or building new bridges. See the enactments, *ante*, 515, 516.

VIII. Modes of Prosecution for Non-Repairs.

Mode of prosecution.

In general, the modes of prosecution for the non-repair of or nuisances to bridges are the same as those for the non-repair of and nuisances to highways, and the reader is referred to title "*Highways in General*," Vol. II., for any further information not to be found under this title. The modes are either—by criminal information—by presentment—or by indictment.

Action for.

An action will not lie against the county by an individual, for non-repair of a county bridge. The reason why an action would not lie was because the inhabitants of the county were not a corporation, and could not be sued—a difficulty which was got rid of by the statutes of hue and cry and other statutes giving a specific remedy against the hundred. (*Mackinnon v. Penson*, 22 L. J. M. C. 57; in error, 23 L. J. M. C. 97; 9 Exch. 609; and see *Nicholl v. Allen*, 31 L. J. Q. B. 283; 1 B. & S. 934, *ante*, p. 510.) This difficulty is not removed by the 43 Geo. III. c. 59, s. 4, which enables the inhabitants of a county to be sued in the name of the surveyor of the county bridges, in respect of bridge works maintained at the expense of the county, for the

indemnity granted to him out of the public funds of the county does not extend to damages, but only to costs and charges, from which it may be inferred that the Act did not intend to create a new liability in an action for damages. (*Mackinnon v. Penon*, 22 L. J. M. C. 57; in error, 23 L. J. M. C. 97; 9 *Exch.* 609; *Russell v. Men of Devon*, 2 T. R. 667.) (See title "*Highways in General*," Vol. II.; "*Nuisance*," Vol. III.)

8. *Prosecution for Non-Repairs, &c.*

1. BY CRIMINAL INFORMATION.

In cases of very aggravated neglect to repair, or where there appears little chance of obtaining justice by preferring an indictment, the Court of Queen's Bench will grant a criminal information against the party liable to repair. (*R. v. —*, 1 *Stra.* 180; see "*Information*," Vol. III.) But this course of proceeding is very rarely resorted to, the more usual one being by presentment or indictment. (2 *Inst.* 701.)

1. By criminal information.

2. BY PRESENTMENT.

The presentment of a public bridge for non-repairs, &c., may at common law be before the Queen's Bench or at the assizes. (2 *Inst.* 701.)

2. By presentment in Queen's Bench.

Decays of bridges are also presentable in the leet or torn. (2 *Inst.* 701.)

At court leet.

By stat. 22 Hen. VIII. c. 5, s. 1, it is enacted "That the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the quorum, shall have power and authority to inquire, hear, and determine in the king's general sessions of peace, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment afore them for the reformation of the same, against such as owen to be charged for the making or amending of such bridges, as the king's justices of this bench use commonly to do, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges."

22 Hen. VIII. c. 2, s. 1.

Four of them at the least.—If the bridge be within a franchise which hath not four justices and a sessions of its own, the justices of the county shall inquire; but if the franchise be a county of itself, and hath not four justices, one of them being of the quorum, it is not within this statute, but is left to the remedy which it had at common law. (2 *Inst.* 702.)

Construction of 22 Hen. VIII. c. 5, s. 1.

And to make Process.—Sect. 5. "And where any bridge or bridges lien in oneshire or riding, and such persons, inhabitants, bodies politic, lands or tenements, which owen to be charged to the making and amending of such bridges, lien and abiden in another shire or riding, or where such bridges been within any city or town corporate, and the persons, inhabitants, bodies politic, lands or tenements, that owen to make or repair any such bridges, lien and been out of the said cities and towns corporate; be it enacted, that in every such case the justices of peace of the shire, city or town corporate, within the which such decayed bridges, or any part thereof shall happen to be, shall have power to inquire, hear, and determine all such annoyances, being within the limits of their commissions or authorities; and if the annoyance be presented, then to make process into every shire within this realm, against such as owen to make or amend any such bridges so presented before them to be decayed, to the annoyance and let of the passage of the king's subjects, and to do further in every behalf in every such case, as they might do by authority of this Act, in case that the persons or bodies politic, lands or tenements, which owen to be charged to the

Process for.

8. *Prosecution for Non-Repairs, &c.*

amending or making of such bridges, or any part thereof, were in the same shire, riding, city or town corporate, where such annoyance shall happen to be. And that all sheriffs, and bailiffs of liberties and franchises, shall truly serve and execute such process, as shall come to their hands from the said justices of peace afore whom any presentment shall be had for any such annoyance, according to the tenor and effect of the said process to them directed, without favour, affection, or correction, upon pain to make such fine as shall be set upon them or any of them by the discretion of the said justices."

This statute of 22 Hen. VIII. is confirmed by the 1 Anne, stat. 1, c. 18, except so far as the proceedings are altered by the last provision.

1 Anne, st. 1,
c. 18.

A single justice may now upon his own view present the inhabitants of a county for the non-repair of a county bridge. (*Reg. v. Breconshire*, 15 Q. B. 813; 19 L. J. M. C. 203; *Reg. v. Bedfordshire*, 4 E. & B. 535; 24 L. J. Q. B. 81.) The 13 Geo. III. c. 78, s. 24, gave every justice of the peace upon his own view, or upon information on oath given him by any surveyor of highways, power to make presentment of the non-repairs of any highways or bridge. By the 43 Geo. III. c. 49, s. 1, the several matters and things contained in the 13 Geo. III. c. 78, relating to highways, are extended to county bridges. The 5 & 6 Will. IV. c. 50, s. 1 repealed 13 Geo. III. c. 78, but inasmuch as the 43 Geo. III. c. 49 is still in force, so much of 13 Geo. III. c. 78 as is applicable to county bridges is still in force. (*Reg. v. Breconshire, ubi sup.*)

Certiorari.

The Act of Anne, (see *post*, 535,) empowers justices on presentment before them to lay such a sum on every parish towards the repair as each has been accustomed to collect; it directs the proceedings to originate in the jurisdiction where the defect exists, and provides that no *certiorari* shall be allowed to remove them. But this last proviso extends only to bridges which the county is bound to repair, and where a district or individual is charged, or the duty comes in question, the 5 Will. & Mary, c. 11, allows the removal, by *certiorari*. (*R. v. Inhabitants of Hanworth*, 2 Stra. 900; and see further, *Inhabitants of Cumberland v. The King*, 3 B. & P. 354, *post*, p. 536.)

Fine for non-repairs.

The court of quarter sessions cannot impose more than one fine for the non-repair of a bridge; however insufficient that fine may be, the only remedy is by a second indictment. This was held in the case of *R. v. Machynlleth, &c.*, 4 B. & Ald. 469. In that case an order of sessions of the county of Montgomery was removed by *certiorari* into the Court of King's Bench. The order was as follows: "It is ordered, that the fine heretofore imposed by the court on the inhabitants of the township of Machynlleth and the parish of Pennegoes, for not repairing Pontfelingerrig bridge, be, and the same is hereby increased by the sum of 200*l.*" On the motion for quashing this order, it appeared from the affidavits that the defendants had been presented at the January sessions, 1818, for the non-repair of the bridge in question, to which presentment they at the same sessions submitted, and a fine of 300*l.* was imposed and afterwards levied upon them. At Michaelmas sessions, 1820, the fine not having been sufficient, the order in question was made, imposing a second fine of 200*l.* The court were of opinion, that the power of the sessions was at an end after the first fine, and that they had no jurisdiction to impose a second, and they quoted the case of *R. v. Old Malton*, (4 B. & Ald. 470, n. (a),) as an authority directly in point, and the order of sessions was quashed.

By stat. 12 Geo. II. c. 29, s. 13, no money shall be applied to the repair of bridges until presentment be made by the grand jury at the assizes or sessions of their insufficiency, inconvenience, or want of reparation. Now, however, by stat. 55 Geo. III. c. 143, s. 5, *ante*, 527, county bridges repaired under contract may be repaired without presentment, &c.

3. BY INDICTMENT, AND HEREIN OF THE PLEA, CERTIORARI, EVIDENCE, TRIAL, JUDGMENT.

INDICTMENT.]—Where a bridge is so out of repair as to be prejudicial to the public, it may be the subject of indictment.

We have already noticed, *ante*, p. 502, who are liable for the non-repair of county bridges.

Any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court for the default of repairs, and shall be put to his remedy at law for a contribution from those who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature; for bridges being of absolute necessity are not to lie unrepaired till suits are determined. (1 *Hawk. c. 32, s. 2*.)

The venue must be laid in the county where the bridge lies. (See *infra*, p. 535.)

The indictment ought to state *what sort* of bridge it is, whether for carts or carriages, or for horses or footmen only. (*R. v. Sainthill*, 2 *Ld. Raym.* 1175; 1 *Salk.* 359.) Such statement must correspond with the proof. Where an indictment alleged that a bridge was a public carriage bridge, and also for the Queen's subjects passing and repassing on foot, and upon the evidence it appeared that it had been used by passengers on horseback and on foot, and not with carriages, it was held that the defendants could not be convicted of any part of the charge. (*R. v. Lancashire*, per Bayley, J., *Lancaster Sum. Ass.* 1820.) As to amendment, see *ante*, tit. "Amendment."

The ancient form of an indictment as mentioned in 2 *Inst.* 701, is *Quod pons publicus et communis situs in altâ regîâ vid super flumen seu cursum aquæ, &c.* In many indictments in modern times, the words *super flumen*, &c., are omitted; but in such indictments, they must be considered as virtually included in the true import of the word bridge; for otherwise such indictments would be vicious, there being many structures bearing the name of a bridge erected across a steep ravine, and in modern times over an ancient road crossed in a transverse direction by a new road, having no reference to water, and which unquestionably the county is not bound to repair. (Per *Tenterden*, C. J., in *R. v. Oxfordshire*, 1 *B. & Ad.* 301.)

As to the statement of the *termini*, see "*Highways in General*," Vol. II.

If the right to use the bridge be only at particular times, it must be so described. (*R. v. Marquis of Buckingham*, 4 *Campb.* 189.) *Post*, "*Highways in General*," Vol. II.

It must be stated that the bridge is public, and that it is in decay. (*Andr.* 285.)

A parish may be indicted for non-repair of a bridge without stating any other ground of liability than immemorial usage. (*R. v. Inhabitants of Hendon*, 4 *B. & Ad.* 628.)

Where the indictment is against the inhabitants of any *particular town*, it is necessary to show that the bridge is within the *town*, and it is insufficient to charge that it is within the *parish*, unless the parish also be alleged to be within the town; moreover, as this is a charge against common right, a consideration must be shown for the liability of the inhabitants of the town; and it has been held, that no sufficient consideration is shown by alleging that the inhabitants of the town were liable by reason of the tenure of certain lands, for as inhabitants they cannot hold lands. (*R. v. Machynlleth*, 2 *B. & C.* 166; 3 *D. & R.* 388; and see *R. v. St. Giles, Cambridge*, 5 *M. & S.* 261.)

In an indictment against a *hundred* for not repairing by prescription, although the hundred may have varied at different times in its compo-

8. Prosecution for Non-Repairs, &c.

8. By Indictment.

Who may be made defendants.
Fine and contribution amongst several.

Venue.

Form of indictment.

8. Prosecution for Non-Repairs, &c.

ment parts, it may, nevertheless, be charged as a hundred immemorially. And the same with respect to a *corporation*, if it be alleged that the "*corporation*" have repaired, and the component parts of it be not specified by describing it as "the mayor, aldermen," &c. (*R. v. Oswestry*, 6 M. & S. 361.)

Where a party is bound to repair *ratione tenuræ*, that circumstance must be set forth on the record. Thus, even against a lord of the manor it will not suffice to charge a prescription without these expressions. (*R. v. Bucknall*, 2 Ld. Raym. 792, 804, *ante*, 509.)

Where this duty is charged the indictment must show the place in which the lands are situate. (2 Hale, 181.) The very terms "by reason of his tenure" should then also be inserted, and the courts will not allow the words "owner and proprietor" to be substituted in their room. (*R. v. Kerrison*, 1 M. & S. 439.) But in presentments by the grand jury there is no occasion to show who ought to repair: it is sufficient if the defect be shown and the bridge stated to be public. (*Andr.* 285.) *Sed quære.*

A corporation must be charged as being bound by prescription, unless it is chargeable merely by reason of the tenure of certain lands. (*Anon.* 13 Rep. 33, *ante*, 509.)

Plea to.

PLEA.]—It hath been resolved that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves by showing either that they are not bound to repair the whole, or any part of the bridge, without showing what other person is bound to repair the same: and it is said that in such case the whole charge shall be laid upon such defendants by reason of their ill plea. (1 Hawk. c. 32, s. 4.)

In an indictment for not repairing a highway, a special verdict was found. The indictment alleged that a certain part of the highway, at the township of Quick, in the West Riding, &c., to wit, a certain part thereof lying next adjoining the west end of a certain public bridge there called Tamewater Bridge, and within the distance of three hundred feet thereof, &c., was and yet is very ruinous, &c. And that the inhabitants of the West Riding of, &c., of right ought to repair, &c. Plea, not guilty. The evidence (as far as it is material to this point) was, that the township of Quick lay in the parish of Saddleworth, in the said riding, which parish had been immemorially divided into four districts called Mears, in one of which mears, called Shaw Mear, the highway in Quick (hereinbefore mentioned) lay; and that the three hundred feet at the other end of the bridge lay in another mear; and that each mear had respectively repaired the said respective highways, &c. The main argument was upon the liability of the county to repair these *ends* of three hundred feet each, in the same manner as they were liable to repair the bridge. This was decided in the affirmative. But in arguing, it was said by Mr. Holroyd, who was counsel for the Crown, and not contradicted by the court, that no question could arise as to any special liability of the respective mears, because the general issue only was pleaded; and any question of that sort, he said, could only be raised by a special plea. He cited *R. v. City of Norwich*, 1 Stra. 180, 182. The counsel for the defendants argued against this, upon the principle of assuming that these *ends* were *highways*, and not parts of the bridge. This, however, the court overruled. (*R. v. W. R. Yorkshire*, 7 East, 588.)

It is suggested, however, that this doctrine must be understood only of indictments against the county, and not of indictments against *individuals*, or bodies corporate. (1 Russ. on Cr. 4th ed. 564; 2 Saund. 159, n. 10.)

Though the county, under the plea of not guilty, can only prove that the bridge was not a public bridge, or that it was in good condition, they may give evidence that particular individuals have been accustomed to repair, not immediately for the purpose of throwing the

liability on them, but to afford ground for the jury to conclude that the bridge is not public. (*R. v. Inhab. of Northampton*, 2 M. & S. 262.)

It is said that where the defendants plead, whether necessarily or otherwise, that others ought to repair, and traverse the charge against themselves, the attorney-general may, in such case, take a traverse upon a traverse, by insisting that the defendants are bound to repair, and traversing the charge against the parties named in the plea: that on this last traverse issue must be taken, and that the attorney-general may afterwards surmise that the defendants are liable to repair, and that the whole matter shall be tried by an indifferent jury, &c. (1 Hawk. c. 32, s. 5.)

In a plea by the inhabitants of a county, that the inhabitants of a particular township have immemorially repaired the highway at the end of a county bridge, situate within the township, it is not necessary to allege any consideration for such prescription. (*R. v. W. R. Yorkshire*, 4 B. & Ald. 623.)

The plea must correspond exactly with the facts which come out in evidence. Therefore, a plea by the inhabitants of the county, that certain townships had immemorially used to repair a bridge, is disproved by evidence that the townships had enlarged the bridge to a carriage bridge, which they had before been bound to repair as a foot bridge. (*R. v. W. R. Yorkshire*, 2 East, 353; and see *R. v. Surrey*, 2 Campb. 455; *R. v. Duchess of Buccleugh*, 1 Salk. 357; 6 Mod. 150; *R. v. Cumberland*, 3 B. & P. 354; but see *Reg. v. Adderbury East*, 5 Q. B. 187; 13 L. J. M. C. 9, ante, p. 509; post, "*Highways in General*," Vol. II.)

So where upon an indictment against a county, the defendants pleaded that J. S. was liable *ratione tenuræ*, and it appeared that J. S. had purchased part of an estate, the owner of which, both before and after the purchase, had repaired the bridge: it was held, that this was not sufficient evidence to support the plea. (*R. v. Oxfordshire*, 16 East, 223.) *Et per* Lord *Ellenborough*, C. J., "The defendants have not maintained their plea. It is pleaded that M., and all those whose estate he hath, have immemorially repaired. Now, there is no evidence that he and those who had the estate have repaired, for it appears that since he purchased the estate another person has repaired. It would have been more correct to have pleaded that 'he and those whose estate he hath with others have repaired,' instead of which, the burthen is cast on him impartibly, without giving him the benefit of a contribution from Lord *Cadogan*. But I should be sorry to conclude the county from bringing forward their case."

So where a county pleaded that by a certain Act of Parliament for amending the road, certain trustees were directed to lay out the tolls thereby granted in repairing the roads, and were empowered to make and repair bridges; that the bridge in question was erected by the trustees under and by virtue of that Act; and that the trustees were liable and ought to repair: it was held, that the bridge being built for public purposes in a public highway, the common law liability to repair attached upon the inhabitants of the county as soon as it was built; and that the plea was clearly insufficient to exonerate them, as it did not aver that the trustees had funds adequate to the repair of the bridge; and even if that fact had been averred and proved, still the county would have been primarily liable, and must have taken their remedy against the trustees. (*R. v. Oxfordshire*, 6 D. & R. 231; 4 B. & C. 194; and see *R. v. Netherthong*, 2 B. & Ald. 179; but see also *Nicholl v. Allen*, 1 B. & S. 934; 31 L. J. Q. B. 283, ante, p. 510.)

8. Prosecution for Non-Repairs, &c.

CERTIORARI.]—By 1 Anne, stat. 1, c. 18, s. 5, it is enacted, "That all matters concerning the repairing and amending of the bridges and highways hereinbefore mentioned, shall be determined in the county where they lie, and not elsewhere; and that no presentment or indictment for not repairing such bridges, or the highways at the end of such

Venne.

8. *Prosecution for Non-Repairs, &c.*

Removal by *certiorari*.

bridges, shall be removed by *certiorari* out of the said county into any other court."

In the case of *R. v. Cumberland*, (6 *T. R.* 194,) the chief question was whether an indictment for not repairing a bridge could be removed by *certiorari* or not? To show that it could *not*, the defendants relied on the above clause; but the prosecutor contended that it was intended only to prevent *defendants* removing such presentments or indictments, and did not take away the *certiorari* from the *prosecutor*. Lord *Kenyon*, C. J., stated several cases in which informations and indictments for non-repair of bridges had been removed by writs of *certiorari* applied for by the prosecutors; and that therefore the court were of opinion that the *certiorari* was properly issued. He also stated, that if it were otherwise it would be an anomalous case in the law of England, for that in these cases the defendants are the inhabitants of a county, and if the indictments cannot be removed by *certiorari*, they must be tried by the very persons who are parties to the cause.

This case afterwards came by writ of error before the House of Lords, where the above judgment was affirmed. (*Inhabitants of Cumberland v. The King*, 3 *Bos. & Pul.* 354.)

A *certiorari* lies to remove an order made by the justices concerning the repair of a bridge, pursuant to a private act of parliament; and the justices ought to return the private act upon which their order is founded. (*Dalt.* 504.)

Upon motion to quash a *certiorari* to remove an indictment against the defendants at sessions, for not repairing a bridge, it was insisted, that by stat. 1 Anne, c. 18, the *certiorari* is taken away. To which it was answered, and resolved by the court, that this Act extendeth only to bridges where the *county* is charged to repair; and that where a private person or parish is charged, and the right will come in question, the Act of the 5 & 6 W. & M., c. 11, hath allowed the granting a *certiorari*; and therefore they refused to quash. (*R. v. Hamworth*, 2 *Stra.* 900.)

Certiorari, when to be applied for.

In such a case the *certiorari* must be moved for before judgment has been pronounced in the inferior court. Therefore where, upon an indictment at the quarter sessions for not repairing a bridge, a verdict was found for the crown, and judgment pronounced accordingly, the Court of Queen's Bench would not allow a *certiorari* to issue to remove the indictment for the purpose of taking objections to it. *Per Curiam*. The defendants have thought proper to take the chance of succeeding at the sessions. They ought clearly to have applied for a *certiorari* before the trial, and it ought not to issue in this late stage of the proceedings. They can now avail themselves of objections to the indictment by writ of error only. (*R. v. Machynlleth*, 1 *B. & C.* 142; 3 *D. & R.* 388.)

Evidence.

EVIDENCE AND WITNESSES.]—The preceding observations as to who are liable to repair will for the most part show the requisite evidence for the prosecution or defence; and see further, "*Highways in General*," Vol. II.

It lies on the prosecutors to prove that the bridge is a public bridge repairable by the county. On an indictment for not repairing arches as part of a bridge, it would be strong evidence that they were part of the bridge, if they were erected at the same time as the main bridge, or if the inhabitants of the county had from time to time repaired three hundred feet of the road beyond these arches, which (if they were part of the original bridge) they would have been liable to do. (See *per Bayley, J.*, in *R. v. Oxfordshire*, 1 *B. & Ad.* 299, note.)

Where the indictment charged a corporation with a prescriptive obligation to repair a bridge, and a charter of a corporation granted by Edw. VI. was given in evidence, from the terms of which it appeared to be doubtful whether the corporation had before existed immemo-

rially, and whether lands had not been given for the repair of the bridges; (*R. v. Stratford-upon-Avon*, 14 *East*, 348;) but parol evidence was given that the corporation had in fact repaired the bridge as far back as living memory could go; it was held that parol evidence and the charter might be taken in aid of each other, and that the preponderance of evidence was, that this was a corporation by prescription, although words of incorporation were used in the incorporating part of the charter only; and that the corporation were still bound to repair by prescription and not by tenure. (*Id.*)

At the trial of an indictment against a county for the non-repair of a public bridge, with a plea that certain third persons are bound to repair the bridge *ratione tenuræ*, evidence of reputation to establish the latter liability is admissible. (*Reg. v. Bedfordshire*, 4 *E. & B.* 535; 24 *L. J. Q. B.* 81.)

On an indictment against a township for non-repair of a bridge, the admissions of one of the churchwardens and of the surveyor of highways, that their township had always repaired the bridge, and the production of certain old township books in their custody, was held admissible evidence against the defendants, Lord *Denman* saying, "I should put this point on higher grounds than that taken at the bar, and should say that where persons are discharging a public duty they are *prima facie* authorized to make communications of this kind, and their admissions are a proceeding which must be evidence against those for whom they act." (*Reg. v. Adderbury, East*, 5 *Q. B.* 187; 13 *L. J. M. C.* 9.) See further, tit. "*Evidence*," Vol. II.

The 1 Anne, stat. 1, c. 18, s. 13, recites, "Whereas many private persons, or bodies politic or corporate, are of right obliged to repair such decayed bridges, and the highways thereunto adjoining, but because the inhabitants of the county, riding or division, in which such decayed bridge or highways lie, have not been allowed, upon informations or indictments brought against such person or persons, bodies politic or corporate, for not repairing such decayed bridges, and the highways thereunto adjoining, by the judges before whom such information or indictment is to be tried, to be legal witnesses;" and enacts, "that in all informations or indictments to be brought and tried in any of her Majesty's courts of record at Westminster, or at the assizes or quarter sessions of the peace, the evidence of the inhabitants, being credible persons, or any of them, of the town, corporation, county, riding or division, in which such decayed bridge or highway lies, shall be taken and admitted in all such cases, in the courts aforesaid; any custom, rule, order or usage to the contrary notwithstanding." Previous to this statute such witnesses were, in some instances, held to be competent on the ground of necessity. (*R. v. Carpenter*, 2 *Show.* 47; *R. v. Inhabitants of Kirdford*, 2 *East*, 561.) See now 14 & 15 Vict. c. 99; and tit. "*Evidence*," Vol. II.

8. *Prosecution for Non-Repairs, &c.*

Reputation.

Evidence of inhabitants to be taken.

1 Anne, c. 18, s. 13.

TRIAL JURORS.]—By 1 Anne, stat. 1, c. 18, s. 5, *ante*, 535, all matters concerning the repairing and amending of bridges and the highways thereunto adjoining shall be determined in the county where they lie and not elsewhere.

Trial Jurors.

It seemeth that no inhabitant of a county ought to be a *juror* for the trial of an issue, whether the county be bound to such repairs or not; and therefore the jury must come from some adjacent county. (1 *Hawk.* c. 32, s. 6.)

And it seems that the same objection may lie as to the *justices*, where they are (as it may probably happen) all interested: in which case it seems that the trial shall be in the next county; for where an impartial trial cannot be had in the proper county, it shall be tried as near to the same as may be; as in the case of *R. v. Norwich*, concerning a county bridge, the trial was in Suffolk. (2 *Burr.* 859, 860.) But now,

What justices may try.

8. *Prosecution for Non-Repairs, &c.*

by a special statute, *viz.*, 1 Ann. st. 1, c. 18, *supra*, an inhabitant of the county in such case may be a witness.

Where the bridge lies within the county of a city or town corporate, and the point in dispute is whether the inhabitants of the city or the county at large ought to repair, on a suggestion of these facts on the record, and that consequently no impartial investigation can take place in either of these jurisdictions, the *venire* will be awarded into the county adjacent to the larger division. (*R. v. Inhabitants of the City of Norwich*, 1 *Stra.* 177.)

Judgment.

JUDGMENT.]—The judgment of the court upon a conviction will generally be regulated by those principles which govern the judgment on conviction for not repairing highways; and for which see "*Highways in General*," "*Fine*," Vol. II.

Costs of frivolous defence.

It seems that in some cases where the evidence is greatly in favour of the non-liability of the defendants to repair, the Court of Queen's Bench will, upon motion, direct a rule to be drawn up for staying the judgment, upon payment of the costs of prosecution; the county in the meantime proceeding to indict the parties whom they contend to be liable. (*R. v. Oxford*, 16 *East*, 223.) The court, however, will not stay judgment generally, but only till further order; and, if the trial of another indictment be not proceeded in with all despatch, judgment will be given. (*R. v. Southampton*, 2 *Chit.* 215.) The judge who tries an indictment for the non-repair of a county-bridge removed by *certiorari* may certify that the defence was frivolous, and order the defendants to pay costs to the prosecutor under the 43 Geo. III. c. 59, notwithstanding the repeal of 13 Geo. III. c. 78 by the 5 & 6 Will. IV. c. 50. (*Reg. v. Merionethshire*, 6 *Q. B.* 343.)

Fines, &c., to be paid to the treasurer.

By 1 Ann. stat. 1, c. 18, s. 4, after reciting that "Whereas upon presentments and indictments for not repairing such bridges, and the highways at the end of such bridges, the fines imposed and set upon such presentments and indictments, and other fines and issues for not repairing, building, and amending such bridges, and the highways at the end of such bridges, are returned into the Court of Exchequer, or other courts;" it is enacted "That no fine, issue, penalty or forfeiture, shall hereafter be returned into the Court of Exchequer or other court, but shall be levied and paid into the hands of the treasurer or treasurers, so as aforesaid appointed by the said justices, to be accounted for by the said treasurer, and to be applied by the said justices towards the building, repairing or amending such bridges, and the highways at the end of such bridges, and to no other end or purpose whatsoever."

We have already seen that the court of quarter sessions cannot impose more than one fine for the non-repair; however insufficient that fine may be, the only remedy, if the defendant still neglect to repair, is by a second indictment. (*R. v. Machynlleth*, 4 *B. & Ald.* 469, *ante*, 532.)

IX. Injuries, &c., to Public Bridges.

At common law.

It is a misdemeanour at common law maliciously to destroy or materially to damage any public bridge, it being a nuisance to all the Queen's subjects. (2 *East*, P. C. 108.)

Powers of Highway Act for preventing nuisances to extend to county bridges and approaches to.

By the 5 & 6 Will. IV. c. 50, s. 22, "The several powers and authorities hereby vested in the surveyor of highways, as well for the getting of materials, as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges, and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters and things in this Act

contained relating to highways shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges and the roads at the ends thereof as aforesaid; the said surveyor or surveyors of county bridges making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the surveyors of highways are required to make under the provisions of this Act."

By 24 & 25 Vict. c. 97, s. 33, "Whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not) or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct, any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

Framed on the 7 & 8 Geo. IV. c. 30, s. 13, and the corresponding section of the Act for Ireland, 9 Geo. IV. c. 56, s. 13. As to imprisonment, solitary confinement, and whipping, see 24 & 25 Vict. c. 97, ss. 74, 75, *post*, "*Malicious Injuries to Property*," Vol. III.

The offence is not triable at any quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

By the 43 Geo. III. c. 59, s. 4, actions for damages done to bridges, &c., and for the recovering of any property belonging to counties, may be brought in the name of the surveyor, &c., *ante*, 530.

10. *Forms.*

Injuries to bridges.

Not triable at sessions.

Actions for injuries to.

X. *Forms.*

County of _____, } TO _____, of the parish of _____, in the said
to wit. _____, } county. We _____ and _____, two of her Majesty's
justices of the peace in and for the said county, duly appointed, in pursuance of
the statute in that case made and provided, to superintend the county bridges,
ramparts, banks, cops, and other works appertaining to the same, and the roads
over the same, and so much of the roads at the ends thereof as by law is to be
repaired at the expense of the said county, within the division or hundred of
_____, in the said county, having on this day inspected the county bridge
_____, situate in the parish of _____ in the said county, and within the
said division or hundred; and it appearing to us, on our own inspection thereof, to
be necessary for the purpose of preventing the further decay and injury of the
same, to order the immediate repairs and amendments to be done to the same, as in
the schedule of particulars by you prepared and signed, and hereto annexed: Now
therefore we, the said justices, do hereby order and direct you immediately to repair
and amend the said county bridge, according to the said schedule of particulars by
you prepared and signed and hereto annexed, provided that the sum to be expended
in such repairs shall not exceed the sum of _____ . Given under our hands
this _____ day of _____, 18 _____.

(1.) Order of two justices to repair a county bridge, under 52 Geo. III., c. 110, s. 1 (a).

County of _____, } TO the justices of the peace at the general quarter sessions,
to wit. _____, } to be holden at _____, in the said county, the
day of _____ 18 _____. We _____ and _____, two of her Majesty's
justices of the peace in and for the said county, duly appointed, in pursuance of

(2.) Certificate to be returned to the sessions, pursuant to 52 Geo. III., c. 110, s. 2 (b).

(a) *Ante*, 524. The Act gives this form.

(b) *Ante*, 525. The Act gives this form.

10. *Forms.*

the statute in that case made and provided, to superintend the county bridges, ramparts, banks, cops, and other works appertaining to the same, and the roads over the same, and so much of the roads at the ends thereof as by law is to be repaired at the expense of the said county, within the division or hundred of _____, in the said county, do hereby certify to the said court of quarter sessions, that on the _____ day of _____ last we did inspect the county bridge _____ situate in the parish of _____, in the said county, and within the division aforesaid; and it having appeared to us, on our own inspection thereof, that _____, and that it was necessary, for the purpose of preventing the further decay and injury of the same, to order the immediate repairs and amendments to be done to the same as follows, viz. _____; therefore we, the said justices, did, on the said _____ day of _____, make our order in writing, signed with our respective hands, and did thereby order and direct of the parish of _____ in the said county of _____, immediately to make the said repairs and amendments, provided that the sum to be expended in such repairs should not exceed the sum of _____ pounds. And we, the said justices, do hereby further certify, that the said repairs so directed to be made as aforesaid, have been made accordingly by the said _____, and that the reasonable price and charges payable to the said _____ for the same amounts to the sum of _____, as per account hereto annexed and verified on the oath of _____.

Given under our hands this _____ day of _____, in the year of our Lord 18 _____.

Form of mortgage of county rates, see ante, p. 529.

(3.) Indictment against a county for suffering a public bridge to be out of repair.

THE jurors for our Lady the Queen upon their oath present that on the _____ day of _____, in the year of our Lord _____, there was and from thence hitherto hath been and still is [do not state it was immemorially public] a certain common and public bridge, commonly called _____ bridge, situate and being in the parish of _____, in the county of _____, in the common Queen's highway leading from the [market town of _____], in the county aforesaid, towards and unto the [market town of _____], in the same county, being a common highway for all the liege subjects of our said Lady the Queen on foot and with their horses, cattle, coaches, carts, and other carriages [according to the fact], to go, return, pass, repass, ride, and labour upon and over every year, at all times of the year [see ante, p. 533], at their free will and pleasure; and that the same during all the time aforesaid of right ought to have been used, and still of right ought to be used by all the said liege subjects for the purposes in that behalf aforesaid, and that the said common and public bridge on the day and year aforesaid, and continually from thence until the day of the taking of this inquisition, at the parish of _____ aforesaid, in the county aforesaid, was and yet is ruinous, broken, dangerous, and in great decay, for want of needful and necessary upholding, maintaining, amending, and repairing the same, so that the liege subjects of our said Lady the Queen, in, upon, and over the said bridge, on foot, and with horses, coaches, carts, and carriages, could not during the time aforesaid, and cannot pass and repass, ride, and labour, without great danger of their lives and loss of their goods, as they before ought and were accustomed to do, and still of right ought to do, to the great damage and common nuisance of all the liege subjects of our said Lady the Queen upon and over the said bridge on foot, and with their horses, coaches, carts, and other carriages about their necessary affairs and business, going, returning, passing, riding, and labouring; and against the peace of our said Lady the Queen, her crown and dignity; and that the inhabitants of the county of _____ aforesaid, of right have been, and still of right are bound to repair and amend the said common bridge when and so often as it shall be necessary.

(4.) Presentment at a quarter sessions of a bridge which the county ought to repair, being out of repair, ante, 531.

[Commence as usual, post, "Presentment," Vol. III.] that at a general quarter sessions of the peace of our Lady the Queen, holden at _____ for the said county, on, &c., before E. F., G. H., &c., esquires, and others, justices of our said Lady the Queen, assigned to keep the peace of our said Lady the Queen, in and for the said county, and also to hear and determine divers felonies, trespasses, and misdemeanours committed within the said county, it is presented by the oath of A. B., &c. [the names of the grand jurors], good and lawful men of the said

county, then and there sworn and charged to inquire for our said Lady the Queen and the body of the said county as followeth, that is to say, aforesaid; the jurors present for our sovereign Lady the Queen upon their oath, that a certain bridge over the river, commonly called bridge, lying and being in the several parishes of and, in the said county of, in the Queen's common highway there, leading from [the market town of], in the county of, to [the market town of], in the county of, for and during twenty years last and upwards, being a common Queen's highway for all the liege subjects of our said Lady the Queen, with their horses, carts, and carriages, to go, pass, ride, and travel, at their free-will and pleasure, on, &c., was and continually from thenceforth hitherto hath been and still is in great decay, broken down, and ruinous, so that the liege subjects of our said Lady the Queen, upon and over the said bridge with their horses, carts, and carriages, could not and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nuisance of all the liege subjects of our said Lady the Queen, upon and over the said bridge, going, passing, riding, and travelling, against the peace of our said Lady the Queen, her crown and dignity; and that the inhabitants of the county of aforesaid, the common bridge aforesaid (so as aforesaid being in decay) ought to repair and amend when and so often as it shall be necessary.

10. Forms.

FROM time whereof, &c., there hath been and still is a certain common and public bridge over the river, commonly called bridge, lying and being in a certain common highway of our sovereign Lady the Queen, for all the liege subjects, &c., on foot, and with their coaches, horses, carts, and carriages, upon and over the said bridge, to go, return, &c., and that one part of the said bridge lies and is situate in the township of, in the parish of, in the city of, and the other part of the said bridge lies and is situate in the parish of, in the city of. And, &c., the said part of the said bridge which lies and is situate in the township of, in the parish of, was and is broken, ruinous, &c., so that the liege subjects, &c., upon and over the same part, &c., which lies and is situate in the said township, on foot, and with their coaches, &c., cannot and could not go, return, &c., without great danger, &c., to the great damage and common nuisance, and that the inhabitants of the township of aforesaid, from time whereof, &c., have repaired and amended, &c., and of right ought to repair and amend the said part of the said bridge which lies and is situate in the township of, in the parish of, in the city of, when and so often, &c. And the jurors aforesaid, &c., say that the inhabitants had not repaired the said part of the said bridge which lies and is situate in the said township of.

(5.) Indictment against a township for non-repair of a bridge.

[Proceed as in Form, *supra*, (No. 3), to the words *crown and dignity*, and then conclude as follows]: And that C. D. late of [gentleman] by reason of his tenure of certain lands, situate, lying, and being in the parish of, in the said county of, during all the time aforesaid was and still is bound to repair and amend the said common bridge as often and whenever it hath been and shall be necessary.

(6.) Indictment against an individual for not repairing a bridge which he ought to do *ratione tenuræ*, ante, 534.

{ THE jurors for our Lady the Queen upon their oath present, that from to wit, time immemorial there was and yet is a common and ancient Queen's highway leading from [the market town of], in the [west riding of the] county of, towards and unto [the market town of], in the county [palatine] of, in, through, and over the [township] of, in the [west riding of] the county of aforesaid, used for all the liege subjects of the Queen for themselves with carriages, &c., to pass, &c. [as ante, No. 3]. And that a certain part of the said highway at the said [township] of, in the [west riding] aforesaid, to wit, a certain part thereof lying next adjoining the [west] end of a certain public bridge there, called bridge, and within the distance of three hundred feet thereof, beginning at the west end of the said public bridge, and extending from thence [westwards] containing in length [forty-

(7.) Indictment for not repairing a highway within distance of 300 feet from a bridge built before 20th March, 1836, ante, 512.

10. *Forms.*

five] feet, and in breadth [*seven*] yards, and a certain other part thereof lying next adjoining to the [*east*] end of the said bridge, and within the distance of three hundred feet thereof, beginning at the east end of the said bridge, and extending from thence eastwards, containing in length one hundred and fifty feet and in breadth seven yards, on the day of , in the year of our Lord , at the parish of , in the county of , was and yet is very ruinous and in decay for want of repair, &c. [as ante, No. 3], so that the subjects of the Queen cannot safely pass, to the common nuisance, &c. [as ante, No. 3], against the peace of our said Lady the Queen, her crown and dignity, and against the form of the statute in such case made and provided. And that the inhabitants of the west riding of the said county of , the said common highway so as aforesaid being in decay, of right ought to repair and amend when and so often as it shall be necessary.

(8.) Commitment under 24 & 25 Vict. c. 97, s. 33, for destroying a bridge, *ante*, 539.

[Commencement as usual, as ante, p. 11, (No. 1.)] on the day of , A.D. , at the parish of , in the said county, a certain public bridge there situate, unlawfully, maliciously, and feloniously did pull down and destroy: against the form of the statute in such case made and provided. These are therefore, &c. [as usual, as ante, p. 11, to the end.]

(9.) Indictment for a like offence *ante*, 539.

to wit. } *THE* jurors for our Lady the Queen upon their oath present, that C. D. on the day of , in the year of our Lord , at the parish of , in the county aforesaid, a certain public bridge there situate, commonly called bridge, then and there unlawfully, maliciously, and feloniously did pull down and destroy, against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity. [If any doubt as to the name or situation of the bridge, add another count or more.]

(10.) Commitment on like Act for doing injury to a bridge to render it dangerous, &c., *ante*, 539.

[Commencement as usual, as ante, p. 11, (No. 1.)] on the day of , A.D. , at the parish of , in the said county, unlawfully, maliciously, and feloniously did, &c. [state the injury done, see the Act, *ante*, p. 539], with intent thereby the said bridge [such bridge or any part thereof] to render dangerous and impassable; and that the said C. D. thereby did render the same dangerous and impassable, against the form of the statute in such case made and provided. These are therefore, &c. [as usual, as ante, p. 11, to the end.]

(11.) Indictment for a like offence, *ante*, 539.

to wit. } *THE* jurors for our Lady the Queen upon their oath present, that C. D. on the day of , A.D. , at the parish of , in the county aforesaid, unlawfully, maliciously, and feloniously did, &c. [state the injury done], with intent thereby then and there the said bridge to render dangerous and impassable; and that the said C. D. then and there did thereby render the same dangerous and impassable, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

Bridges (of Cities and Boroughs).

[13 & 14 Vict. c. 64.]

BY the 13 & 14 Vict. c. 64, after reciting that it was expedient that all bridges in any city or borough, which such city or borough, and not the county in which such city or borough is situate, is legally bound to

maintain and repair, should be under the sole management and control of the council of such city or borough : And that such council of such city or borough should in certain cases be empowered to borrow on the security of the rate of such city or borough the money which may from time to time be required for the purpose of maintaining, altering, widening, repairing, improving, and re-building such bridges : It was enacted that from and after the passing of that Act every bridge which is either wholly or in part within the limits of any city or borough in which there is or shall be a body corporate, of Mayor, Aldermen, and Burgesses, under the provisions of an Act passed in the sixth year of the reign of his late Majesty, intituled, "An Act to provide for the regulation of Municipal Corporations in England and Wales," or of any charter granted in pursuance of that or of any subsequent Act, and which bridge such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain or repair, shall, as to the whole of such bridge, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough, if part only is within such limits, be maintained, altered, widened, repaired, improved, or re-built under the sole management and control of the council of such city or borough.

Sect. 2. "And that for the purpose of this Act such council of any such city or borough, at any meeting of such council, shall have and may exercise all the powers which the justices of the peace of any county at their general or quarter sessions of the peace, or at any other time, now have and may exercise with respect to any county bridge, or as near thereto as the nature of the case will admit ; and that it shall and may be lawful for such council, and they are hereby empowered, to order and direct that such sum or sums of money as shall be necessary for the purposes aforesaid shall be paid, out of the rate of such city or borough, by the treasurer for the time being of such city or borough, at such times and in such manner as to the said council shall seem fit : Provided always, that it shall not be necessary for the council of any such city or borough to cause any notice to be given or published in any newspaper in any case in which notice is required to be given or published with respect to county bridges."

Sect. 3. "And that when and so often as it shall appear to the council of any such city or borough, at any meeting of such council holden at any time after the passing of this Act, that the amount of any estimate approved of by such council for the maintaining, altering, widening, repairing, improving, or re-building of any such bridge or bridges, or any part thereof, or the approaches thereto, which any such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain and repair, shall exceed the sum of one hundred and fifty pounds, it shall and may be lawful for such council, and they are hereby empowered, after having first entered a statement of the amount of such estimate in the minute book of the council, to borrow and take up on mortgage of the rate of such city or borough, by an instrument in the form contained in the schedule to this Act annexed marked (A), or to the like effect, any sum or sums of money not exceeding the amount of such estimate, in sums of not less than fifty pounds each, at interest, as to the said council shall appear necessary and expedient, for the purposes aforesaid or any of them, and to secure every such sum of money so borrowed upon the credit of the said rate ; and it shall and may be lawful for such council at any such meeting, and they are hereby authorized and empowered, to treat and agree with any person or persons for the loan of any such sum or sums of money ; and every such instrument under the hand of the mayor or other member of the council who shall happen to preside at any such meeting as aforesaid, and under the corporate seal of the said city or borough, shall be and the same is hereby declared to be effectual for

Bridges (of Cities and Boroughs).

Providing for the repairs and re-building of bridges within limits of corporate cities or boroughs.
5 & 6 Will. IV. c. 76.

Councils may direct payment of necessary amount of money out of rates.

Council may borrow money for the purpose of maintaining or re-building bridges.

*Bridges (of
Cities and
Boroughs).*

securing the money therein expressed to be advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such instrument shall be stipulated; and a copy of every such instrument shall be kept by the town clerk of any such city or borough as aforesaid; and it shall and may be lawful for any person or persons who shall be entitled to the money thereby secured, and for his, her, or their executors or administrators, and such person or persons, and his, her, or their executors or administrators, are hereby empowered, by endorsing his, her, or their name or names on the back of any such instrument, and by giving notice of such endorsement to the town clerk for the time being, to transfer the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons; and every such assignee or assignees, his, her, or their executors or administrators, may in like manner transfer the same again, and so *toties quoties*; and the person or persons to whom any such transfer thereof shall be made, and his, her, or their executors, administrators, or assigns, shall be a creditor or creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced as aforesaid."

Interest on
monies borrowed
to be a charge
upon the rates.

Sect. 4. "And that it shall and may be lawful for such council and they are hereby authorized and required to charge the rate to be raised in such city or borough, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same, and such sums shall be assessed on such city or borough in such manner as borough rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of such council, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the council shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall give directions for assessments to be made in due time, so as to provide for the regular payment thereof; and the treasurer of such city or borough shall and he is hereby required to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due and what principal money has been discharged, and what remains due, and the books or book so adjusted and settled to lay before the council at every quarterly meeting of such council; and such council shall also and they are hereby required, at every such quarterly meeting, carefully to inspect all such accounts, and to give such orders and directions for carrying the purposes of this Act into execution, in such manner as to them shall seem meet; and such council at such quarterly meeting as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit: provided always, that they shall in the first place discharge all such securities as shall bear the highest rate of interest."

Repair of
bridges included
within bounda-
ries of municipal
boroughs.
5 & 6 Will. IV.
c. 76.

Sect. 5. "And whereas by the extension of the boundaries of certain boroughs under the provision of the Act of the fifth and sixth year of King William IV., intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' certain bridges and parts of bridges have been included within the boundaries of those cities and boroughs, and are thereby subject to the jurisdiction of such cities or boroughs, which bridges before the passing of such Act were maintained as to the whole or such parts thereof as were within the limits of such cities and boroughs by the inhabitants thereof, and the

remaining bridges and parts of bridges which were not situate within such limits were maintained by the inhabitants of the counties or ridings respectively adjoining thereto : and whereas doubts have arisen respecting the future repairs and maintenance of such bridges : be it therefore enacted, that every bridge which is wholly or in part included within the boundary of any such city or borough the inhabitants whereof, before the passing of the said recited Act, were by prescription or otherwise liable to and did maintain the bridges and parts of bridges within their respective cities and boroughs, shall as to the whole of such bridges, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough if part only is within such limits, be maintained, altered, widened, and repaired, improved or re-built, under the sole management and control of the council of such city or borough."

1. *What is a Burglary.*

Burglary.

OFFENCES against the property in the house of another, which fall short of burglary, belong to title "*Larceny*," and are to be found under that title, Vol. III.

I. *What constitutes the Offence of Burglary*, 545.

1. *As to the Breaking*, 546.
2. *As to the Entry*, 549.
3. *As to the Dwelling-house*, 550.
4. *As to the Ownership of it*, 554.
5. *As to the Time*, 558.
6. *As to the Intention*, 559.

II. *Burglary by breaking out of a House*, 560.

III. *Indictment, &c., for*, 560.

IV. *Trial and Verdict*, 562.

V. *Punishment*, 563.

VI. *Rewards for Apprehending a Burglar*, 563.

VII. *Offence of having Housebreaking Tools in Possession*, 563.

VIII. *Forms*, 564.

I. *What constitutes the Offence of Burglary.*

The word *burglar* seemeth to have been brought unto us out of Germany, by the Saxons, and to be derived of the German *burg*, a house, and *larron* a thief, probably from the Latin, *latro*, *latronis*.

Burglary is a felony at common law, in breaking and entering a dwelling-house of another, in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. (*Hale's Sum.* 49; and see 2 *Russ. on Cr.* 4th ed. by *Greaves*, 1.)

As to burglary by breaking out of a house, see tit. "*Larceny*," Vol. III.

Derivation
Definition of
offence at
common law.

Burglary by
breaking out of a
house.

1. *What is a Burglary.* As to housebreaking and stealing in a dwelling-house, or in shops, and as to entering a house by night with intent to commit felony, &c., see "*Larceny*," Vol. III.

Housebreaking
and stealing in.

I. AS TO THE BREAKING.

Must be a
breaking.
What is one.

To constitute a burglary, there must be an actual or constructive breaking into the house. Every entrance into the house by a trespasser is not a breaking in this case. As if the door of a mansion house stand open, and the thief enter, this is not breaking. So, if the window of the house be open, and a thief with a hook or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of a window, and with a hook or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house. (3 *Inst.* 64 ; 1 *Hale*, 551.) Where a window was a little open, and not sufficiently so to admit a person, and the prisoner pushed it wide open and got in, this was held to be no sufficient breaking. (*R. v. Smith*, 1 *Moo.* 178.) If there be an aperture in a cellar window to admit light, through which a thief enters in the night, this is not burglary. (*R. v. Lewis*, 2 *C. & P.* 628 ; *R. v. Spriggs*, 1 *Moo. & R.* 357.)

Violence is not
necessary.

There is no need of any demolition of the walls, or any manual violence, to constitute a breaking. Lord *Hale* says, "These acts amount to an actual breaking, *viz.*, opening the casement or breaking the glass window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched." (1 *Hale*, 552 ; and see *Pugh v. Griffiths*, 7 *A. & E.* 836 ; *R. v. Jordan*, 7 *C. & P.* 432 ; *R. v. Wheeldon*, 8 *C. & P.* 747 ; *R. v. Hyams*, 7 *C. & P.* 441.) Where a glass window was broken, and the window opened with the hand, but the shutters in the inside were not broken ; this was ruled to be burglary, by *Ward*, C. B., *Powis* and *Tracy*, justices, and the Recorder ; but they thought this the extremity of the law ; and on a subsequent conference, *Holt*, C. J., and *Powel*, C. J., doubting and inclining to another opinion, no judgment was given. (2 *East's P. C.* 487. See *R. v. Bailey*, *R. & R.* 341.) Where an entry was effected by taking the glass out of a door, it was holden to be a burglary. (*R. v. Smith*, *R. & R.* 417.)

Entering by
chimney.

If a thief enter by the chimney, it is a breaking ; for that is as much closed as the nature of things will permit. (1 *Hawk.* c. 17, s. 6.) And it would be a burglarious breaking to constitute burglary, though the party does not enter any of the rooms of the house. Thus in *R. v. Brice*, (*R. & R.* 450,) the prisoner got in at a chimney, and lowered himself a considerable way down, just above the mantel piece of a room on the ground floor. *Holroyd*, J., and *Burrough*, J., thought this was not a breaking and entering of the dwelling-house, on the ground that he was not in the dwelling-house till he was below the chimney-piece. The rest of the judges, however, held otherwise ; for that the chimney was part of the dwelling-house, that the getting in at the top was a breaking of the dwelling-house, and that the lowering himself was an entry therein.

Must be a
fastening.

Where the prisoner effected an entry, by pulling down the upper sash of a window, which had not been fastened, but merely kept in its place by the pulley weight : the judges held this to be a sufficient breaking to constitute burglary, even although it also appeared that an outside shutter, by which the window was usually secured, was not closed or fastened at the time. (*R. v. Haines*, *R. & R.* 451 ; and see *R. v. Hyams*, 7 *C. & P.* 441.) Where an entry was effected, first into an outer cellar, by lifting up a heavy iron grating that led into it, and then into the house by a window : and it appeared that the

window, which opened by hinges, had been fastened by means of two nails as wedges, but could notwithstanding easily be opened by pushing; the judges held that opening the window, so secured, was a breaking sufficient to constitute burglary. (*R. v. Hall, R. & R.* 355.) So where a party thrust his arm through the broken pane of a window, and in so doing broke some more of the pane, and removed the fastenings of the window and opened it. (*R. v. Robinson, 1 Moo.* 327. And see *R. v. Bird, 9 C. & P.* 44. See also *Ryan v. Shilcock 7 Ex.* 72.)

But if a window thus opening on hinges, or a door, be not fastened at all, opening them would not be a breaking, within the definition of burglary. Even where the heavy flat door of a cellar, which would keep closed by its own weight, and would require some degree of force to raise it, was opened; it had bolts by which it might have been fastened on the inside, but it did not appear that it was so fastened at the time: the judges were divided in opinion whether the opening of this door was such a breaking of the house as constituted burglary. (*R. v. Callan, R. & R.* 157.) It was holden in *Brown's case* (2 *East's P. C.* 487) that it was. It seems the only difference between these two cases is, that in *Brown's case* there were no interior fastenings, but in *Callan's* there were, though not used. In a later case it has been held by *Bolland, B.*, that the lifting up of a trap door covering a cellar, which was merely kept in its place by its own weight, and which had no fastenings, because it being a new trap door, they had not been put on, is not a sufficient breaking to constitute a burglary. (*R. v. Lawrence, 4 C. & P.* 231; *R. v. Smith, 1 Moo. C. C.* 178. See *contra, R. v. Russell, 1 Moo.* 377.)

Where the offender, with intent to commit a felony, obtains admission by some artifice or trick for the purpose of effecting it, he will be guilty of burglary, for this is a *constructive* breaking. Thus where thieves, having an intent to rob, raised the hue and cry, and brought the constable, to whom the owner opened the door; and when they came in they bound the constable and robbed the owner; this was held a burglary. So if admission be gained under pretence of business; or if one take lodgings with a like felonious intent, and afterwards rob the landlord; or get possession of a dwelling-house by false affidavits without any colour of title, and then rifle the house; such entrance being gained by fraud, it will be burglarious. (2 *East's P. C.* 485.) So in *A. Hawkin's case, O. B.* 1704, (2 *East's P. C.* 485,) she was indicted for burglary; upon evidence it appeared that she was acquainted with the house, and knew that the family were in the country; and meeting with the boy who kept the key, she prevailed upon him to go with her to the house, by the promise of a pot of ale; the boy accordingly went with her, opened the door, and let her in, whereupon she sent the boy for the pot of ale, robbed the house, and went off; and this being *in the night time*, it was adjudged that the prisoner was clearly guilty of burglary. (And see *Doe v. Carter, 8 T. R.* 302.) If a servant conspire with a robber, and let him into the house by night, this is burglary in both; (1 *Hale, 553*; 1 *Hawk. c.* 17, s. 14; *R. v. Cornwall, 2 Str.* 881;) for the servant is doing an unlawful act; and the opportunity afforded him of doing it with greater ease rather aggravates than extenuates the guilt. But if a servant, pretending to agree with a robber, open the door and let him in for the purpose of detecting and apprehending him, this is no burglary, for the door is lawfully open. (*Reg. v. Johnson, C. & M.* 218.)

A breaking may be also constructive, as where in consequence of violence commenced or threatened, in order to obtain entrance, the owner, either from apprehension of the force, or with a view more effectually to repel it, opens the door through which the robbers enter. But where no fraud or conspiracy is made use of, or violence commenced or threatened, in order to obtain an entrance, there must be an actual breach of some part of the house, though it need not be accompanied

1. What is a Burglary.

Where thing shut with its own weight.

Entering by fraud a constructive breaking.

So entering by threats.

1. *What is a Burglary.* with any violence as to the manner of executing it. (2 *East's P. C.* 486.)

Must be into part of a house.

Some part of the house must be broken. Where the prisoner opened the area gate with a skeleton key, and from the area passed into the kitchen, through a door which did not appear to have been shut at the time; the judges held that opening the area gate was not a breaking of the dwelling-house, as there was no free passage, in the time of sleep, from the area into the house. (*R. v. Davis, R. & R.* 322.) So, breaking a door, which formed part of the outward fence of the curtilage of a dwelling-house, and which opened, not into any building, but into a yard only, was holden not to be a breaking of the dwelling-house; the premises consisted of a dwelling-house, warehouses, and stables, surrounding a yard; there was an immediate entrance to the dwelling-house from the street, and a gate and gateway, under one of the warehouses, leading into the yard; the prisoner entered the premises by breaking this gate: the judges held that this was not burglary: that breaking this gate, which was part of the outward fence of the curtilage, and not opening into any of the buildings, was not a breaking of any part of the dwelling-house. (*R. v. Bennett, R. & R.* 289.) A shutter-box partly projected from a house, and adjoined the side of the shop window, which side was protected by wooden panelling, lined with iron: held, that the breaking and entering the shutter-box did not constitute burglary. (*R. v. Paine, 7 C. & P.* 135.) As to what is a dwelling-house, see *post*, 550, and *post*, "*House*," Vol. II.

Breaking inner rooms, &c.

A burglary may be committed by a breaking on the inside: for though a thief enter a dwelling-house in the night-time through the outer door being left open, or by an open window, yet, if when within the house, he turn the key or unlatch a chamber door, with intent to commit felony, this is burglary. (*R. v. Johnson, 2 East's P. C.* 488.) And this may be done by a servant, who sleeps in an adjacent room, unlatching his master's door, and entering his apartment with intent to kill him; (1 *Hale*, 544; 2 *East's P. C.* 488;) or to commit a rape on his mistress. (*Gray's case, 1 Stra.* 481.) But Lord *Hale* doubts whether a guest at an inn is guilty of burglary by rising in the night, opening his own door, and stealing goods from other rooms. (1 *Hale*, 554; but see *Reg. v. Wheeldon, 8 C. & P.* 747; *Reg. v. Wenmouth, 8 Cox, C. C.* 348.) And it seems certain that breaking open a chest or trunk is not in itself burglari-ous; (*Fost.* 108, 109; 2 *East's P. C.* 488;) and, according to the better opinion, the same principle applies to cupboards, presses, and other fixtures, which, though attached to the freehold, are intended only the better to supply the place of moveable depositories. (*Fost.* 109.) And Mr. *J. Foster* there says, "in questions between the heir or devisee, and the executor (see 2 *Vern.* 508; 1 *P. Wms.* 94), those fixtures may with propriety enough be considered as annexed to and parts of the freehold. The law will presume that it was the intention of the owner, under whose bounty the executor claimeth, that they should be so considered; to the end that the house might remain to those who, by operation of law, or by his bequest, should become entitled to it, in the same plight he put it or should leave it, entire and undisturbed. But in capital cases I am of opinion that such fixtures, which merely supply the place of chests and other ordinary utensils of household, should be considered in no other light than as mere moveables, partaking of the nature of those utensils, and adapted to the same use." (See 1 *Hale*, 555; 2 *East's P. C.* 489; see also *Amos on Fixtures*.)

Breaking out of a house.

It was formerly doubted whether the breaking might be subsequent to the entry; as if the prisoner being in the house, without violence, should break it, in order to escape with his booty; (1 *Hale*, 554;) but this difficulty was removed by 12 Ann. c. 7, and the breaking out of a house in the night time was held burglary in *Reg. v. Wheeldon (ubi sup.)*; and see now the 24 & 25 Vict. c. 96, s. 51, tit. "*Larceny*."

Unlocking and opening a hall door of a house and running away, is a sufficient breaking out of the house. (*R. v. Lawrence*, 4 C. & P. 231.)

1. *What is a Burglary.*

2. AS TO THE ENTRY.

It is essential that there should be an *entry* as well as a *breaking*; (1 *Hale*, 555;) and the entry must be connected with the breaking. (Reg. v. *Davis*, 6 Cox, C. C. 369; see *R. v. Smith*, R. & R. 417, *post*, 559.)

There must be an entry.

It is deemed an entry when the thief breaketh the house, and his body, or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, (though the hand be not in,) or into a hole of the house which he hath made, with intent to murder or kill; this is an entry and breaking of the house; but if he doth barely break the house, without any such entry at all, this is no burglary. (3 *Inst.* 64; 2 *East's P. C.* 490.)

What amounts to.

Thieves came by night to rob a house; the owner went out and struck one of them; another made a pass with a sword at persons he saw in the entry, and in so doing his hand was over the threshold. This was adjudged burglary by great advice. (2 *East's P. C.* 490.)

In the case of George Gibbons, Old Bailey, June, 1752, (*Fost.* 107; 2 *East's P. C.* 490,) who was indicted for burglary in the dwelling-house of John Allan, it appeared in evidence that the prisoner in the night time cut a hole in the window shutters of the prosecutor's shop, which was part of his dwelling-house, and putting his hand through the hole took out watches and other things, which hung in the shop within his reach; but no entry was proved, otherwise than by putting his hand through the hole. This was held to be burglary, and the prisoner was convicted.

Introducing the hand through a pane of glass, broken by the prisoner, between the outer window and an inner shutter, for the purpose of undoing the window latch, is a sufficient entry. (*R. v. Bailey*, R. & R. 341.) So would the mere introduction of the offender's finger. (*R. v. Davis*, R. & R. 499; and see 1 *Hale*, 533.)

So, an entry down a chimney is a sufficient entry into the house, for the chimney is part of the house. (*R. v. Brice*, R. & R. 450, *ante*, 546.)

But an entry through a hole in the roof, left for the purpose of admitting light, is not a sufficient entry to constitute burglary; for a chimney is a necessary opening, and needs protection; whereas, if a man choose to leave a hole in the wall or roof of his house instead of a fastened window, he must take the consequences. (*R. v. Spriggs*, 1 *Moo. & R.* 357.)

It is even said that discharging a loaded gun into a house is a sufficient entry. (1 *Hawk.* c. 17, s. 11; 1 *Hale*, 555; 4 *Camp.* 220; *Pickering v. Rudd*, 1 *Stark.* 48.)

The prisoner raised a window which was not bolted, and he thrust a crowbar under the bottom of the shutter (which was about half a foot within the window) so as to make an indent on the inside of the shutter, but from the length of the bar his hand was not inside the house. This was held not to be a sufficient entry to constitute burglary. (*R. v. Rust*, 1 *Moo. C. C.* 183; *Car. C. L.* 293, *S. C.*, *sub nom. R. v. Roberts.*)

Where the house was broken, but not entered, and the owner for fear threw out his money, it was holden to be no burglary; though clearly robbery, if taken in the presence of the owner. (2 *East's P. C.* 490.)

1. *What is a Burglary.*

Where thieves bored a hole through the door with a centre-bit, and part of the chips were found in the inside of the house, by which it was apparent that the end of the centre-bit had penetrated into the house, yet as the instrument had not been introduced for the purpose of taking the property or committing any other felony, it was decided that this was not sufficient to constitute burglary. (*R. v. Hughes*, 1 *Leach*, 406; 2 *East's P. C.* 491.)

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all. (3 *Inst.* 64.)

The entry need not be at the same time as the breaking, provided both be in the night: therefore, if thieves break a hole in the house one night, with intent to enter another night, and commit felony, which they execute accordingly, it is burglary. (1 *Hale*, 551.)

3. AS TO THE DWELLING-HOUSE AND RESIDENCE.

The burglary must be in a dwelling-house.

The breaking and entering, to constitute a burglary, must be into the dwelling-house of another, that is to say, a house in which the occupier or his family usually *reside*, or in other words dwell and lie in.

Church.

It has been said that a church may be the subject of burglary; (3 *Inst.* 64; 1 *Hale*, 556;) but this seems questionable; (see 1 *Hawk.* c. 17, s. 17;) and the Act 24 & 25 Vict. c. 96, s. 51, merely mentions "*dwelling-house*." There is an express provision as to breaking and entering into and *stealing* chattels in a church, 24 & 25 Vict. c. 96, s. 50, *post*, "*Larceny*," Vol. III.

Person must reside in it.

A house under repair, or a building intended for and constructed as a dwelling-house, in which no one lives, though the owner's property is deposited there, is not a place in which burglary can be committed; for it cannot be deemed his dwelling-house, until he has taken possession and began to inhabit it; (*Reg. v. Lyons*, 1 *Leach*, 185; *Fuller's case*, 2 *East's P. C.* 498; 1 *Leach*, 196, n.; *Elsmore v. St. Briavells*, 2 *M. & R.* 514; 8 *B. & C.* 461;) nor will it make any difference if one of the workmen engaged in the repairs sleep there in order to protect it; (1 *Leach*, 186, *in notis*;) nor though the house is ready for the reception of the owner, and he has sent his property into it preparatory to his own removal, will it become for this purpose his mansion. (*R. v. Hallard*, 2 *East's P. C.* 498; *R. v. Thompson, Id.*; 2 *Leach*, 771.) So if the landlord of a house purchase the furniture of his out-going tenant, and procure a servant to sleep there in order to guard it, but without any intention of making it his own residence, a breaking into the house will not amount to burglary. (*R. v. Davis*, 2 *Leach*, 876; *R. v. Smith*, 2 *East's P. C.* 497; *R. v. Fuller, Id.* 498; 1 *Leach*, 196, n.) The mere casual use of a tenement will not suffice. (1 *Hale*, 557.) Where neither the owner nor any of his family have slept in the house, it is not his dwelling-house, so as to make the breaking into it burglary, though he had used it for his meals and all the purposes of his business. (*R. v. Martin*, *R. & R.* 108.) If a man die in his leasehold house, and his executors put servants in it, and keep them there at board wages, burglary may be committed in breaking it, and it may be laid to be the executor's property. (2 *East's P. C.* 499.)

What actual residence necessary or not.

It is not absolutely necessary to make it burglary that any person should be actually within the house at the time the offence is committed. For if the owner leaves it *animo revertendi*, though no person resides there in his absence, it will still be his mansion. (1 *Hawk.* c. 17, s. 18.) As if a man has a house in town and another in the country, and goes to the latter in the summer, the nocturnal breaking into either, with a felonious design, will be burglarious; (*Fost.* 77; 2 *East's P. C.* 496, *Nutbrown's case*;) so if he goes a journey. (*R. v. Murray*, 2 *East's P. C.*

496.) And though a man leaves his house and never means to live in it again, yet if he uses part of it as a shop, and lets his servant and his family live and sleep in another part of it, for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family will be a habitation by him, and the shop may still be considered as part of his dwelling-house. (*R. v. Gibbons*, *R. & R.* 442.) But where the prosecutor, an upholsterer, left the house in which he had resided with his family, without any intent of returning to live in it, and took a dwelling-house elsewhere, but still retained the former house as a warehouse and workshop; two women, employed by him as work-women in his business, and not as domestic servants, slept there to take care of the house, but did not have their meals there, or use the house for any other purpose than sleeping in it as a security to the house; the judges held that this was not properly described as the dwelling-house of the prosecutor. (*R. v. Flannagan*, *R. & R.* 187.)

The occupation of a servant in that capacity, and not as tenant, is in many cases the occupation of the master, and will be a sufficient residence to render it the dwelling-house of the master. (*R. v. Stock*, *R. & R.* 185, *post*, 555; *R. v. Wilson*, *R. & R.* 115.) Where the prisoner was indicted for burglary in the dwelling-house of J. B., J. B. worked for one W., who did carpenter's work for a public company, and put J. B. into the house in question, which belonged to the company, to take care of it, and some mills adjoining. J. B. received no more wages after than before he went to live in the house. It was held not rightly laid. (*R. v. Rawlings*, 7 *C. & P.* 150.) If a servant live in a house of his master's at a yearly rent, the house cannot be described as the master's house, though it is on the premises where the master's business is carried on, and although the servant has it because of his service. The servant is in such a case the tenant of the master, who might have distrained for rent, and could not arbitrarily have removed him, and consequently, the occupation of the servant cannot be deemed the occupation of the master. (*R. v. Jarvis*, 1 *Moo. C. C.* 7; and see further, *post*, 557; "*Larceny*," Vol. III.)

Every permanent building, in which a party may dwell and lie, is deemed a dwelling-house, and burglary may be committed in it. A set of chambers in an inn of court or college is deemed a distinct dwelling-house for this purpose. (1 *Hale*, 556; 1 *Hawk.* c. 17, s. 18.) So even a loft over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken. (*R. v. Turner*, 1 *Leach*, 305; 1 *Hawk.* c. 17, s. 18.) So also burglary may be committed in a lodging-room; (1 *Leach*, 89;) or in a garret used for a workshop, and rented together with an apartment for sleeping, and if the landlord does not sleep under the same roof, the place may be laid as the mansion of the lodger. (1 *Leach*, 237; see further, *post*, 557.) But burglary cannot be committed in a tent or booth in a market or fair, even although the owner lodge in it; (1 *Hawk.* c. 17, s. 35; 1 *Hale*, 557;) because it is a temporary, not a permanent, edifice. But if it be a permanent building, though used only for the purposes of a fair, it is a dwelling-house. (*R. v. Smith*, 1 *M. & Rob.* 256.)

The term "mansion-house," in its common sense, not only includes the dwelling-house, but also all out-houses, as barn, stable, cow-house, dairy-house, if they be parcel of the mansion, though they be not under the same roof or joining contiguous to it. (1 *Hale*, 558, 559.)

And all out-houses, within the same curtilage, with the dwelling-house, occupied and immediately connected and communicating with it, may be the subject of burglary, and the burglary, in such cases, may be alleged to have been in the dwelling-house. This was the case with respect to all buildings within the curtilage, until by statute 7 & 8 Geo. IV. c. 29, s. 13, "no building, although within the same curtilage

1. What is a Burglary.

Residence by a servant.

What a sufficient house.

A set of chambers in inn of court, &c.

Out-houses, &c.

1. *What is a Burglary.*

with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for the purpose of burglary, or for any of the purposes aforesaid, *unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other.*" This provision is now repealed by 24 & 25 Vict. c. 95, and is only re-enacted by the 24 & 25 Vict. c. 96, for the purposes of that Act, which does not relate to burglary at common law, except so far as to fix its punishment. (See s. 52.) The law would now, therefore, appear to stand upon this subject as it did before the passing of the Act of Geo. IV. (a), for the effect of the 52nd section of 24 & 25 Vict. c. 96, by which the punishment for burglary is fixed, does not, it would seem, make it an offence against that statute. (See *Reg. v. Polly*, 1 C. & K. 77.) Where the prosecutor's house

(a) The decisions before that time are therefore now useful. This offence was deemed to be committed by breaking open a shop built close to a dwelling-house, although no one slept in it, and it had no internal communication with the principal mansion. (*R. v. Gibson*, 1 Leach, 357.) And a building used with a dwelling-house and opening into an enclosed yard belonging thereto was deemed parcel of the dwelling-house, though it also opened into an adjoining street, and although it had no internal communication with the dwelling-house. (*R. v. Lithgo, R. & R.* 357.) And where the prosecutor's house was at the corner of a street, and adjoining thereto was a workshop, beyond which a stable and coach-house adjoined, all were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, &c., making altogether an inclosed yard; the workshop had no internal communication with the house, and it had a door opening into the street; its roof was higher than that of the dwelling-house; the street door of the workshop was broken open in the night and the offender being indicted for burglary and convicted, the judges held this workshop was parcel of the dwelling, and that the conviction was right. (*R. v. Chalkley, R. & R.* 334.) So where the prisoner broke into a goose-house opening into the prosecutor's yard, into which his house also opened, and the yard was surrounded partly by other buildings of the homestead and partly by a wall, some of the buildings had doors opening backward, and there was a gate in one part of the wall opening upon a road; this goose-house was held to be part of the dwelling-house. (*R. v. Clayburn and another, R. & R.* 360.)

But where a centre building was

allotted to a variety of trades and there were two wings annexed to it, both of which were used as dwelling-houses and were occupied by different persons, but had no internal communication with the building, though the roofs of all were connected, and the entrances of all were out of the same common enclosure, the case was considered otherwise, and it was holden not a dwelling-house, for the purpose being evidently a distinct tenement, and occupied jointly, while the adjoining houses were the respective abodes of individuals. (*Egginton's case*, 2 East's P. C. 424; 2 B. & P. 508; 2 Leach, 913.)

It was holden that burglary might take place in respect of a building eight or nine yards distant from a dwelling-house, and with only a paling between them; (1 Hale, 558;) and an outhouse in the yard of a dwelling-house was considered parcel of the dwelling-house if the yard was inclosed, though the occupier had another dwelling-house opening into the yard, and he let such dwelling-house with certain easements in the yard. (1 Moo. C. C. 13; and see *Brown's case*, 2 East's P. C. 493.) But it was even then laid down, that if the outhouse was at a considerable distance, as if it stood a bowshot from it, so as not to be reasonably esteemed parcel of the principal dwelling, nor within the curtilage, it would not answer to this description. (1 Hale, 144.) And in more recent times it has been decided, that an outhouse several feet from the mansion, and unconnected by any common inclosure, is not a place in which burglary can be committed. (*Garland's case*, 2 East's P. C. 493; 1 Leach, 144.) And a building separated from a dwelling-house by a public road, however narrow, was held not to be a parcel of the dwelling-house, if there

Burglary.

1. What is a Burglary.

consisted of two rooms for living in, another room used as a cellar, and a wash-house on the ground-floor, and of three bed-rooms up stairs, one of them over the wash-house, and the bed-room over the house-place communicated with that over the wash-house, but there was no internal communication between the wash-house and any of the rooms of the house, but the whole was under the same roof; and the defendant broke into the wash-house, and was breaking through the partition wall between the wash-house and the house-place; it was holden that the defendant was properly convicted of burglary, in breaking the house. (*R. v. Burrows*, 1 Moo. 274.)

In *Reg. v. Higgs*, (2 C. & K. 322,) the prisoner broke into a dairy of the prosecutor; this dairy adjoined a kiln, one of the walls of the kiln supporting one end of the dairy; and the kiln adjoined the dwelling-house, one end of the kiln being supported by one of the walls of the dwelling-house. There was no internal communication from the dwelling-house to the dairy; but to get from the dwelling-house to the dairy a person had to go from the dwelling-house by a door into the yard, and from the yard by another door into the dairy. The kiln and dairy were not under the same roof with the dwelling-house, and the roofs of the kiln and dairy were lower than the roof of the dwelling-house; and the dairy was held not to be part of the dwelling-house by reason of the 7 & 8 Geo. IV. c. 29, s. 13; but since the repeal of that Act, it would seem that burglary might be committed in such a place. So in *Somerville's case*, (2 Lew. C. C. 113), behind the dwelling-house there was a pantry; to get into the pantry from the dwelling-house it was necessary to pass through the kitchen into a passage; at the end of the passage there was a door, and outside the door, on the left hand, was the door of the pantry; when the passage door was shut, the pantry door was excluded and open to the yard, but the roof or covering of the passage projected beyond the door of the passage, and reached as far as the pantry door. There was no door communicating directly between the pantry and the house, and the two were not under the same roof. The roof of the pantry was "tea-fall," and leant against the wall of an inner pantry, in which there was a latchet window common to both, and which opened between them. The pantry was held not to be part of the dwelling-house, because there was no internal communication between the two within the repealed Act. (See also *R. v. Turner*, 6 C. & P. 407.)

If there be any doubt as to the nature of the building broken and entered, a count may be inserted for breaking and entering a building within the curtilage. (See "*Larceny*," Vol. III., and *Arch. C. Pl.* 16th ed. 461.)

A dwelling-house may be so divided as to form two or more dwelling-houses within the meaning of the word in the definition of burglary. (See the authorities, *post*, 556.) Divided house.

was no common fence or roof to connect them, though it were held by the same tenure, and though some of the offices necessary to the dwelling-house adjoined it, and though there was an awning extending from it to the dwelling-house. But if it be made a sleeping-place for any of the servants of the dwelling-house, it may be deemed a distinct dwelling-house. (*R. v. Westwood*, R. & R. 495.)

A door which only forms part of the outward fence of the curtilage,

and opens into no building, but into the yard only, was not such a part of the dwelling-house as that the breaking thereof would constitute burglary. (*R. v. Bennett*, R. & R. 289.)

An area gate, opening into the area only, was not deemed part of the dwelling-house, so as to make the breaking thereof burglary, if there was any door or fastening to prevent persons in the area from entering the house, although such door or fastening might not be secured at the time. (*R. v. Ouns*, R. & R. 322.)

1. *What is a Burglary.*

Who the owner of the house.

General rule.

Occupation by servant.

4. AS TO THE OWNERSHIP IN THE HOUSE.

It is necessary to ascertain to whom the mansion belongs, and to state that with accuracy in the indictment. If the rule, observes Mr. East, (2 *East's P. C.* 499, 500,) by which to ascertain this ownership may be compressed with sufficient discrimination into a small compass, I should say generally, that where the legal title to the whole mansion remains in the same person; there, if he inhabit it either by himself, his family, or servants, or even by his guests, the indictment must lay the offence to be committed against *his* mansion. And so it is if he let out apartments to inmates who have a separate interest therein, if they have the same outer door or entrance into the mansion in common with himself. But if distinct families be in the exclusive occupation of the house, and have their ordinary residence or domicile there, without any interference on the part of the proper owner, or if they be only in possession of parts of the house as inmates to the owner, and have a distinct and separate entrance, then the offence of breaking, &c., their separate apartments must be laid to be done against the mansion-house of such occupiers respectively.

Nice questions frequently arise as to whether a party dwells in and occupies a house in his own right, or as the servant of another. A workman was employed at 15s. a-week wages, and a cottage free of rent and taxes, for himself and his family to dwell in: upon an indictment for burglary, the judge at the trial held, that as the workman occupied this cottage for his own benefit, and not for the use or benefit of his master, it was well described as the dwelling-house of the workman; and upon a reference to the judges, they were of the same opinion. (*R. v. Joblin, R. & R.* 525; and see *R. v. Smyth, 5 C. & P.* 202; *R. v. Jarvis, 1 Moo. C. C. 7, infra.*) Where a tollgate-house, erected by the trustees of a turnpike as and for the dwelling-house of the person who might be employed to collect the tolls at a particular gate, was broken and entered in the night time; and upon an indictment for the burglary, it appeared that the trustees had let the tolls to Ward, and Ward had employed Ellis (at weekly wages, with the privilege of living in the toll-house in question) to collect them, and that Ellis dwelt in the house for that purpose: the indictment having described this as the dwelling-house of Ellis, the judges held the description to be correct, for Ellis had the exclusive possession; it was unconnected with any premises of Ward's, and Ward did not appear to have any interest whatever in it. (*R. v. Camfield, 1 Moo. C. C. 42.*) And where a servant lived rent-free in a house belonging to his master, and his master paid the taxes, and his master's business was carried on in the house; but the servant and his family were the only persons who slept in the house; and that part of the house in which his master's business was carried on, was at all times open to those parts in which the servant lived; upon an indictment for breaking and entering that part of the house in which the master's business was carried on, it was held, that it might be described as the servant's house; but it was not decided that it might not also be described as the house of the master. (*R. v. Witt, 1 Moo. C. C. 248.*)

If a servant live in the house of his master at a yearly rent, the house cannot be described as the master's house though it be on the premises where the master's business is carried on, and although the servant has it because of his service. (*R. v. Jarvis, 1 Moo. C. C. 7; and see R. v. Smyth, 5 C. & P. 202.*)

G. Brown was indicted for burglary in the dwelling-house of M. Graydon, and stealing thereout oats. A second count stated it to be in the dwelling-house of T. Trumbull. Graydon, a farmer, had a dwelling-house in which he lived, a stable, cowhouse, cottage, and barn, all in one range of buildings in the order mentioned, and under one roof; but

they were not inclosed by any wall or court yard, nor was there any communication from one to the other within. Trumball's family resided in the cottage by agreement with Graydon, when he went into his service; but Trumball paid no rent; only an abatement was made in his wages on account of his family residing in the cottage. Some corn having been missed out of the barn, Trumball and another person put a bed in the barn, and went and slept there, and a few nights after they had so done, the prisoner unlocked the barn door, and took away a quantity of oats. After conviction, judgment was respited upon a doubt whether it could be considered as the dwelling-house either of Graydon or Trumball. Upon a reference it was agreed, (Mich. T. 1787,) by all the judges, that the sleeping in the barn made no difference. But they held, (*Buller, J.*, doubting,) that this was no more than a license to Trumball and servant to lodge in the cottage, and not a letting it to him; and that the barn, as well as the rest of the buildings, being under the same roof, continued parts of the mansion-house of Graydon. And many of the judges inclined to think that if there had been a demise of the cottage to Trumball, the barn would still have continued part of Graydon's dwelling-house in point of law. (*G. Brown's case*, 2 *East's P. C.* 501.) So in another case, where the servant of three partners in trade had weekly wages, and particular rooms assigned to him, as lodging for himself and his family, over the bank and brewery office of his employers, with which his lodging communicated by a trap door and a ladder, it was holden by the twelve judges, that a burglary committed in the banking room was well laid as in the dwelling-house of the three partners. (*R. v. Stockton and others*, 2 *Taunt.* 339; 2 *Leach*, 1015; *R. & R.* 185, *sub nom. R. v. Stock.*)

Where the prisoner was indicted for burglary in the dwelling-house of J. B.: J. B. worked for one W. who did carpenter's work for a public company, and put J. B. into the house in question, which belonged to the company, to take care of it, and some mills adjoining. J. B. received no more wages after than before he went to live in the house. It was held not rightly laid. (*R. v. Rawlins*, 7 *C. & P.* 150.)

A gardner lived in a house of his master, quite separate from the dwelling of his master, and the gardener had the entire control of the house he lived in, and kept the key; it was held, that, on an indictment for burglary, the gardener's house might be laid either as his or his master's. (*R. v. Rees*, 7 *C. & P.* 568.)

If a house be tenanted by a married woman, it must in all cases be deemed the house of her husband, and not of her, even although she live separate from her husband. (*Farr's case*, *Kel.* 43; 2 *East's P. C.* 504; and see *Boggett v. Frier*, 1 *East*, 301; *R. v. Smyth*, 5 *Car. & P.* 202.) Where a married woman lived apart from her husband, upon an income arising from property vested in trustees for her separate use, the judges held that a house which she had lived in was properly described as her husband's dwelling-house, though she paid the rent out of her separate property, and the husband had never been in it. (*R. v. French*, *R. & R.* 491.) Upon an indictment for burglary in the dwelling-house of George Gillings, it appeared that Gillings owned and had built the house in question, but had never lived in it; that suspecting his wife of infidelity with one Websdale, they agreed to separate, and he told her she might live in the house in question, and gave her a bed and bedding, &c., for the purpose; she afterwards lived and cohabited with Websdale in the house, with the knowledge of her husband; Websdale paid the expenses of housekeeping, but never paid any rent for the house to Gillings; the judges held, that the house was properly described as the dwelling-house of the husband. (*R. v. Wilford*, *R. & R.* 517.)

A prisoner was indicted for breaking into the house of Elizabeth A. and stealing her goods. There was a second count, laying the property

1. What is a Burglary.

Married women.

1. *What is a Burglary.*

of the goods in the Queen. It was shown by proof of the record, that the husband of Elizabeth A. had been convicted of felony; and it was also proved, that he was still in prison under the sentence, and that the articles stolen were his before his conviction, and had remained in the house from the time of his apprehension, and that the wife continued in possession of the house and goods till they were stolen by the prisoner. It was held that the prisoner might be properly convicted of larceny on the second count, which laid the property of the goods in the Queen, although there had been no office found; and that he could not be convicted of housebreaking, as that part of the indictment which laid the goods and the house to be those of Elizabeth A. could not be supported. (*Reg. v. Whitehead*, 9 C. & P. 429.)

Insolvent debtor.

A house in part of which a man lives, and other parts of which he lets to lodgers, may be considered and described as his house, though he has taken the benefit of the Insolvent Debtors' Act, and executed an assignment including the house, if the assignee has not taken possession; at least, no objection can be made if in other counts it be stated as the house of the assignee, and in others of the lodger in whose room the offence was committed. (*R. v. Ball*, 1 Moo. C. C. 30.)

Public offices, palaces, &c.

In the case of persons employed by the crown or public companies, the same rule prevails as in other cases. If burglary be committed in the invalid office at Chelsea, in Somerset House, in Whitehall, in any of the public offices or royal palaces, the mansion must be laid as the Queen's. (*R. v. Peyton*, 1 Leach, 324, and *in notis*; *R. v. Williams*, 1 Hale, 522.)

Corporations, and public bodies.

The same principle applies to corporations; for if a burglary be laid to be in the dwelling-house of one of the officers belonging to the African Company, it will be bad, although a corporation cannot be resident. (*Kel.* 37; 1 Leach, 324, *in notis*; 2 East's P. C. 501.) But it has been holden that if the agent of a trading company resides in the house of his employers in town, it may properly be laid as his dwelling. (*R. v. Margette*, 2 Leach, 930.) So a city hall may be described as the residence of the clerk to the company to whom it belongs. (*Id.*, *in notis*.) The ground for these two last decisions is stated to be that the punishment of burglary was intended to protect the actual occupant from the terror of disturbance during the hours of darkness and repose, but it would be absurd to suppose that that terror which is of the essence of the crime could from a breaking and entry in one place produce an effect in another. (2 Leach, 931.) J. Picket was indicted for burglary in the dwelling-house of the East India Company, which is inhabited by their servants; and he was convicted and executed. O. B. April, 1765. (2 East's P. C. 501.) C. Maynard was indicted for burglary in the mansion-house of the master, fellows, and scholars of Bennet College, in Cambridge. It appeared that he broke into the buttery of the college, and there stole some money; and it was agreed by all the judges, upon a reference to them, that it was burglary. (*C. Maynard's case*, 2 East's P. C. 501.)

Where house divided.

If by an actual severance all internal communication be cut off, the partitions become distinct houses, so that if one house is divided to accommodate the families of two partners, though the rent and taxes of the whole are paid out of the common fund, each part will be regarded as a mansion. (*R. v. Jones*, 1 Leach, 537; 2 East's P. C. 504; *Tracy v. Talbot*, Salk. 532.) But a house, the joint property of partners in trade in which their business is carried on, may be described as the dwelling-house of all the partners, though only one of the partners resides in it. (*R. v. Athea*, 1 Moo. C. C. 329.)

Inn.

If the chamber of a guest at an inn be forced open and his goods stolen, the burglary must be laid in the dwelling-house of the landlord. (1 Hale, 557; *R. v. Prosser*, 2 East's P. C. 502; 2 MS. Sum. 249.) And the same in all other cases where the occupier has the use merely and no interest in the apartments he occupies. (See 1 Hawk. c. 17, s. 26.)

Where inmates have several rooms in a house of which they keep the keys, and inhabit them severally with their families, yet if they enter at one outer door with the owner, these rooms cannot be said to be the dwelling-houses of the inmates, but the indictment ought to be for breaking the house of the owner. But if the owner inhabit no part of the house, or even if he occupy a shop or a cellar in it, but do not sleep therein, the apartments of such inmates shall be considered as their respective dwelling-houses. (*Carrell's case*, 1 *Leach*, 237; *Trapshaw's case*, 1 *Leach*, 427; and see 1 *Hawk.* c. 38, s. 26.)

If the owner, who lets out apartments in his house to other persons, sleep under the same roof, and have but one outer door common to him and his lodgers, such lodgers are only inmates, and all their apartments are parcel of the one dwelling-house of the owner. (*Kel.* 84.) But if the owner do not lodge in the same house, or if he and the lodgers enter by different outer doors, the apartments so let out are the mansion for the time being of each lodger respectively, even though the rooms are let by the year. (2 *East's P. C.* 505; see *post*, 558.) Where a servant of the prosecutor dwelt in a part of the house, and the rest (excepting the shop) was let off to lodgers: the judges held that the shop, which was in the prosecutor's occupation, was properly described as the dwelling-house of the prosecutor. (*R. v. Gibbons*, *R. & R.* 442, *ante*, 551.) Where the prosecutor, having a dwelling-house with a shop adjoining to it, with separate entrances from the street, but the shop having a back door into a passage in the house, let the shop to his son, who used it as a place of business only, and did not reside there; a burglary having been committed in the shop, the judges held that it was properly described in the indictment as the dwelling-house of the father. (*R. v. Sefton*, *R. & R.* 202.)

If the owner let off a part, but do not dwell in the part he reserves for himself, then the part let off is deemed in law the dwelling-house of the party who dwells in it, whether it communicates internally with the other part or not; but the part he has reserved for himself is not the subject of burglary: it is not his dwelling-house, for he does not dwell in it; nor can it be deemed the dwelling-house of the tenant, for it forms no part of his lodging. (1 *Leach*, 89, 237, 437.) Where a coachman rented the loft over a coachhouse and stables, and he and his family resided in it, a burglary committed in it was holden to be well laid to have been committed in the dwelling-house of the coachman. (*R. v. Turner*, 1 *Leach*, 305.) The governor of the workhouse at Birmingham, under a contract for seven years with the guardians and overseers of the poor of that place, occupied and dwelt in the governor's house, with the exception of one room, which the guardians and overseers reserved for themselves as an office, and three other rooms as store-rooms; the clerk of the guardians and overseers kept one key of the office, the governor another, for the purpose of securing the effects in case of fire, and the room was cleaned and taken care of by the governor's servant: this office being broken and entered in the night time, ten of the judges held that it could not be described as the dwelling-house of the governor. (*R. v. Wilson*, *R. & R.* 115.) So where the owner of a dwelling-house, warehouse, and counting-house, within the same curtilage, let the dwelling-house to his warehouseman at a yearly rent: the counting-house and warehouse being broken and entered in the night time, the judges held that this was not burglary; that the counting-house and warehouse could not be described as the dwelling-house of the master; because the dwelling-house was occupied by the warehouseman as tenant, and not as servant; nor could they be described as the dwelling-house of the tenant, for they formed no part of his holding. (*R. v. Jarvis*, *R. & M.* 7. See *R. v. Smyth*, 5 *Car. & P.* 202.)

If the owner let the whole of a dwelling-house, retaining no part of it for his or his family's dwelling, the part each tenant occupies and

1. What is a Burglary.

Inmates.

Owner letting off part, and residing in residue.

Owner letting off part, but not residing in residue.

Owner letting whole of house to different tenants.

1. What is a Burglary.

Separate demises of premises communicating internally.

dwells in is deemed in law to be the dwelling-house of such tenant, whether the parts holden by the respective tenants communicate with each other internally or not. Thus where the owner of a house divided the shop into two by a partition, each having a door opening into the street, and let one of them and some rooms in the house to Choice, and the other with the remainder of the house to Ryan; at the end of each shop was a door, opening into a common passage, that led to one common staircase; Choice paid £100 a-year and the taxes for the whole house for his part; Ryan £80 a-year for his; each had his separate family, separate kitchen, &c.; but the rooms occupied by each opened on the common staircase above-mentioned: upon an indictment for burglary, it appeared that the prisoner entered at the window of the common staircase, unlocked the door of Ryan's shop, and entered it; and the judges held that the place was rightly described in the indictment as the dwelling-house of Ryan. (*R. v. Bailey*, 1 *Moo. C. C.* 23.) One Richards let her dwelling-house to her son Josiah, and a warehouse, communicating internally with the dwelling-house, to Josiah and his younger brother, at a separate rent; Josiah lived in the dwelling-house, and constantly used the communication between that and the warehouse; both brothers carried on their joint business in the warehouse: the warehouse being broken and entered in the night time, the judges held that it could not be deemed a part of the dwelling-house, as the dwelling-house was holden under a demise to Josiah alone, and he alone dwelt in it, and the warehouse was holden under a distinct demise to himself and his brother. (*R. v. Jenkins*, *R. & R.* 244.) Where a lodger occupied a sleeping-room on the first floor, and a workshop in the attic, and the rest of the house was occupied by other lodgers, a burglary in the workshop was holden by the judges to be well laid to have been committed in the dwelling-house of the lodger who rented it. (*R. v. Correll*, 1 *Leach*, 237.)

Burglary in offender's own house.

A man cannot be indicted for burglary in his own house. Therefore if the owner of a house break and enter into the room of his lodger and steal his goods, he can only be convicted of the larceny. (*Kel.* 84; 2 *East's P. C.* 502, 506.)

5. AS TO THE TIME OF COMMITTING THE OFFENCE.

The offence must be in the night time.

The breaking and entry must be in the night time. (See *ante*, 545; 4 *Bla. Com.* 224.) As to what shall be reckoned night, and what day, for this purpose the 7 Will. IV. & 1 Vict. c. 86, s. 4, enacted, "That so far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day" (a), but this statute has now

(a) By the old law the day was accounted to begin only at sun-rising, and to end immediately upon sunset; but the better opinion at the time of passing the 7 Will. IV. and 1 Vict. c. 86 enactment seems to be, that if there be day light or *crepusculum*, (twilight,) enough begun or left to discern a man's face withal, it was no burglary. (3 *Inst.* 63; 1 *Hale*, 350; 2 *East's P. C.* 509.) But this did not extend to moon-light, for then many midnight burglaries would go un-

punished; and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest, when sleep has disarmed the owner, and rendered his castle defenceless. (4 *Bla. Com.* 224.) The ancient law appears to be the most reasonable. In the summer there is but a very short time when there is not daylight sufficient to discover the countenance of the offender; and it is

been repealed by the 24 & 25 Vict. c. 95, and the only substitute for it is the interpretation clause in the 24 & 25 Vict. c. 96, which provides that "for the purposes of *this Act* the night shall be deemed to commence at nine o'clock in the evening of each day, &c." but as this latter Act does not extend to embrace burglary at common law, it is doubtful whether the old law, as to what constitutes night time, be not again in force.

The breaking and entering must both be committed in the night time; if the breaking be in the day and the entering in the night, or the breaking in the night and the entering in the day, it is no burglary. (1 *Hale*, 551.) But the breaking may be in one night, and the entering in another. (1 *Hale*, 551; *R. v. Jordan*, 7 C. & P. 432.) The breaking, however, must be with intent to enter, and the entry with intent to commit a felony. Where the prisoner took the glass out of a door on Friday night, with intent thereby to enter the house, and afterwards on the Sunday night, and before the glass was replaced, he entered by the aperture he had thus made; the judges held, that the breaking being originally with intent to enter, and the breaking and the entering being both in the night time, the offence amounted to burglary, notwithstanding the time that had elapsed between the breaking and the entry. (*R. v. Smith*, R. & R. 417; see *ante*, p. 549.)

1. What is a Burglary.

What shall be deemed night.

Both the breaking and entry must be in the night.

6. AS TO THE INTENTION.

There can be no burglary but where the indictment both expressly alleges, and the verdict also finds an intention to commit some felony: for if it appear that the offender meant only to commit a trespass, as to beat the party, or the like, he is not guilty of burglary. (1 *Hawk.* c. 17, s. 36; 3 *Inst.* 65; 1 *Hale*, 561.) In the case of *R. v. Knight and Roffey*, the prisoners were indicted for a burglary in the dwelling-house of Mary Snelling, the indictment stating the intent to be to steal the goods of Leonard Hawkins. It appeared from the evidence that Hawkins, who was an excise officer, had seized some bags of tea in a shop, entered in the name of Smith, as being there without a legal permit, and had removed them to Mary Snelling's, where he lodged. The prisoners and many other persons broke open Mary Snelling's house in the night, with intent to take his tea. Smith did not appear to have been in company with them; but it was shown that they supposed the tea to belong to Smith; and that the act was committed either in company with him, or by his procurement. The jury being directed to find as a fact with what intent the prisoners broke and entered the house, found that they intended to take the goods on the behalf of Smith; and upon the point being reserved, the twelve judges were of opinion that the indictment was not supported, as however outrageous the conduct of the prisoners was in so endeavouring to get back Smith's goods, still there was no intention to steal. But if the indictment had been for breaking the house with intent feloniously to rescue goods seized, &c., which is felony by stat. 19 Geo. II. c. 34, some of the judges thought that it would have been burglary. But even in that case it was agreed, that evidence must be given on the part of the prosecutor to show that the goods were uncustomed, in order to throw the proof upon the prisoners that the duty was paid; but being found in oil cases, or in great quantities in an unentered place, would have been sufficient for that purpose. (2 *East's P. C.* 510.) It seems the better opinion, that an intention to commit a rape, or other such crime, which is made felony by statute, and was a trespass only at common

The burglary must be with a felonious intent

well known that a very considerable portion of the offences of this nature are committed during that light.

Besides, the same reason why moonlight is not sufficient to protect the burglar would apply to twilight,

1. *What is a Burglary.*

Immaterial whether intent be executed.

law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because wherever a statute makes any offence felony, it incidentally gives it all the properties of felony at common law. (1 *Hawk.* c. 17, s. 38.)

It is immaterial whether the felonious intent be executed or not: thus, they are burglars who, with a felonious intent, break any house or church in the night, although they take nothing away. And herein this offence differs from robbery, which requires that something be taken, though it be not material of what value. J. Dobbs was indicted for burglary, in breaking and entering the stable of J. Bayley, part of his dwelling-house, in the night, with a felonious intent to kill and destroy a gelding of one A. B. there being. It appeared that the gelding was to have run for forty guineas, and that the prisoner cut the sinews of his fore-leg to prevent his running, in consequence of which he died. *Parker, C. J.*, ordered him to be acquitted; for his intention was not to commit the felony by killing and destroying the gelding, but a trespass only to prevent his running, and, therefore, no burglary. But the prisoner was again indicted for killing the gelding, and capitally convicted. (*Dobb's case*, 2 *East's P. C.* 513; see 1 *Hale*, 561.) If the breaking and entering be at different times, both must appear to have been done with the same felonious intent. (*R. v. Smith, R. & R.* 417; *Reg. v. Davis*, 6 *Cox* 369, *ante*, 549.) The felonious intent with which the prisoner broke and entered the house cannot be proved by positive testimony; it can be proved only by the admission of the party, or by circumstances from which the jury may presume it. Where it appears that the prisoner actually committed a felony after he entered the house, this is satisfactory evidence, and almost conclusive, that the intent with which he broke and entered the house was to commit that felony. Indeed, the very fact of a man's breaking and entering a dwelling-house in the night time is strong presumptive evidence that he did so with intent to steal; and the jury will be warranted in finding him guilty, unless the contrary be proved. And where a man was found in the night time in the chimney of a shop, just above the mantel-piece, and before he had entered the shop; the jury found him guilty of burglary with intent to steal upon this evidence merely, and the judges confirmed the conviction. (*R. v. Brice, R. & R.* 450; *ante*, 546, 549.)

As to what is a variance in the statement of the intent, see *post*, 561, 562.

II. Burglary by breaking out of a House.

See "*Larceny*," Vol. III.

Breaking out of house,

III. Indictment for Burglary.

Description of offence.

The indictment must describe the facts necessary to constitute the offence of burglary, viz., the breaking and entering a dwelling-house of another in the night-time, and with some felonious intent.

Breaking and entering.

The words *broke and entered* must both be inserted, both of them being essential to constitute the offence. (1 *Hale*, 550.) The word *burglariously* is necessary; (4 *Co.* 39, 40;) as also the word *feloniously*, as in other felonies; and it must be stated that the offence was committed in a mansion or dwelling-house; and if it be stated to have been in a "house" merely, the proceedings will be defective. (1 *Hale*, 550.) When the place is an outhouse which adjoins the mansion, it must either be laid in the dwelling-house generally, or in a stable, &c.,

Dwelling-house.

part of the dwelling-house, either of which methods may be adopted. (1 *Leach*, 144; 2 *East's P. C.* 512, 513.)

Care must be taken that the local description of the house be according to the fact, as a variance would be fatal unless amended. If it be not expressly stated where the dwelling-house is situated, it shall be taken to be situated at the place named in the indictment by way of special venue. (See *R. v. Napper*, 1 *Moo. C. C.* 44.) And if two parishes having been named, the house is stated to be "at the parish aforesaid," the last parish shall be intended. (*R. v. Richards*, 1 *M. & Rob.* 177.) Where it appeared that the dwelling-house was in the parish of A., and an outhouse, connected and occupied with it, in the parish of B., and a burglary was committed in the outhouse; one of the questions reserved for the opinion of the judges was, whether the dwelling-house was properly described in the indictment as being in the parish of B.; but the judges gave no opinion upon this point, having decided the case upon another ground. (*R. v. Bennett*, *R. & R.* 289; see now tit. "Amendment," ante, p. 163.)

The name of the owner of the house must be stated with such certainty to a common intent, as is in general necessary in the description of the party who has sustained the injury. An error in such statement would be fatal, unless amended at the trial. (2 *Leach*, 774; 2 *East's P. C.* 514.) See the cases and authorities as to who is to be deemed the owner, &c., ante, p. 554. The owner may be described by an assumed name, by which he had been known for the preceding five years, and during that time had never been known by his original name. (*R. v. Norton*, *R. & R.* 510.) Where a person was indicted for burglary in the house of Sarah Lunns, and her name appeared to be London, he was acquitted of the capital part of the charge; (1 *Leach*, 253, *in notis*); and though it is said to be doubtful whether the leaving of a blank for the surname would not be vicious, (1 *Hale*, 558; *Cole's case*, *Moore*, 466,) there can be but little doubt that at the present day such an omission would be material. (3 *Chit. C. L.* 1113.) But the power of amendment now conferred renders the question, in the result, immaterial. See tit. "Amendment," ante, p. 163. If there be any doubt whether the house broken and entered belongs to A., B., or C., to obviate the difficulty counts alleging it to be the dwelling-house of A., B., and C. respectively, should be inserted.

It must be stated that the offence was committed in the night-time; and it is not only necessary to state a day and year, but also an hour about which the offence was committed; in order that, under the common law, it might appear to the court to be at a time when there could be no daylight remaining. If this be wanting, the defendant can only be convicted of a simple larceny. At the Lancaster Lent Assizes, 1771, (*R. v. Waddington*, 2 *East's P. C.* 513,) there was an indictment for burglary, alleging the fact to have been committed in the night, but not expressing about what hour it was done; *Gould*, J., held the indictment insufficient as for a burglary, and directed the prisoner to be found guilty of a simple felony only. He said, that according to the old doctrine, a burglary might be committed at any time between sun-setting and sun-rising; but that the rule then established was, that it cannot be committed during the *crepusculum*; that therefore it is necessary to specify the hour, in order that the fact may appear upon the face of the indictment to be done between the twilight of the evening and that of the morning. But it is not necessary that the evidence should correspond with the allegation either as to the day or hour, so that it shows the offence to have been committed in the time of darkness. (2 *Hale*, 179.) Both breaking and entering must be charged to have taken place in the night, or there is no charge of burglary. (1 *Hale*, 549.) The hour should, though after twelve o'clock at night, be stated to be in the night of the preceding day. As to what is night-time by statute, see ante, p. 558.

3. Indictment for Burglary.

Local description of.

Ownership of house.

Several counts.

Time.

3. *Indictment for Burglary.*

Felonious intent.
Ownership of goods.

The felonious intent must be stated, and this correctly so; for if it be stated that the defendant intended to commit one species of felony, and it is proved that he intended another, the indictment will be bad. (1 *Hale*, 561; *R. v. Dobbs*, 2 *East's P. C.* 513; *R. v. Dingley*, 2 *Leach*, 840; 2 *East's P. C.* 510, 514.) Where the intent laid was to steal the goods of J. W., and it appeared in evidence that no goods of any person of the name of J. W. were in the house, but that the name of J. W. had been inserted in the indictment by mistake; the judges held the variance to be fatal, and the defendant was accordingly acquitted. (*R. v. Jenks*, 2 *East's P. C.* 514; 2 *Leach*, 774.) But where the intent laid was to steal the goods of A., and the proof of ownership of the goods was, if any thing, that the goods did not belong to A. alone, it was held that the proof was sufficient, as it was enough to show an intent to steal goods in the house generally, without proving an intent to steal the goods of any particular person. (*Reg. v. Clarke*, 1 *C. & K.* 421.) And a distinction exists as to this point between an attempt to steal and an actual larceny, for in the former case no ownership of the goods need or can be alleged, but in the latter case ownership can and must be properly alleged. (*Reg. v. Johnson*, *L. & C.* 489; 34 *L. J. M. C.* 24.) Mortgage-deeds in an uncanceled state are choses in action, and not goods and chattels, so as to answer to that description under an allegation of an intent to steal goods and chattels in an indictment for burglary. (*Reg. v. Powell*, 2 *Den. C. C.* 403.) Where A. was charged with breaking into the house of K., and stealing the goods of M.; it was proved by M. that K., his brother-in-law, had taken the house, and that M., (who lived on his property,) carried on the trade of a silversmith for the benefit of K. and his family, having himself neither a share in the profits nor a salary. M. stated that he had authority to sell any part of the stock, and might take money from the till, but that he should tell K. of it; and that he sometimes bought goods for the shop, and sometimes K. did it: it was held, that M. was a bailee, and that the goods in the shop might properly be laid as his property. (*Reg. v. Bird*, 9 *Car. & P.* 44.)

Attempt to steal.

Mortgage deeds.

If an actual larceny is averred, and it is proved that the theft was not complete, the defendants must be acquitted. (2 *Leach*, 708; *R. v. Furnival*, *R. & R.* 445; 2 *East's P. C.* 514.) Nor can a previous stealing in the same house be connected with a subsequent breaking, so as to support this charge. (*Id.*) On the other hand, if a felony has been actually committed, an averment of the intent to commit it will suffice. (1 *Hale*, 560.) Where there is a doubt as to what specific felony was intended, the intention should be laid differently in separate counts. (2 *East's P. C.* 515.)

The burglariously breaking and entering a dwelling-house, with intent to commit a rape, is not a crime which includes an assault; and therefore, in an indictment for such a burglary, the prisoner could not have been convicted of any assault under the 11th sect. of the stat. 1 Vict. c. 85, when in force. (*Reg. v. Watkins*, 1 *Car. & M.* 264; see *ante*, "Assault.")

Conclusion.

If bank notes, or other valuable securities, be stolen, conclude "against the form of the statute," &c.; for although this is not necessary as to the burglary, yet if that part of the charge fail, such a conclusion would be deemed to be necessary in order to convict for the larceny. (*R. v. Pearson*, 5 *C. & P.* 121.)

Amendment.

An amendment may now be made in an indictment, in all such cases as the above, under 14 & 15 Vict. c. 100. See *ante*, tit. "Amendment."

IV. Trial.—Verdict.

Not triable at sessions.

This offence is not triable at any quarter sessions; 5 & 6 Vict. c. 38, s. 1.

The indictment may be so laid as to comprise several offences, arising out of the same transactions, so that the prisoner may be found guilty of part and acquitted of the rest. As, if the prisoner be charged with burglariously breaking and entering the dwelling-house, and stealing goods of the value of 40s., he may be acquitted of breaking and entering in the night time, &c., and yet found guilty of stealing in the dwelling-house. (*R. v. Withal and Overend*, 1 *Leach*, 88, and 2 *East's P. C.* 517; and *R. v. Hungerford*, *id.* See "*Indictment*," Vol. III.)

Or upon such an indictment the prisoner may be acquitted of the capital charges, viz., of the burglary, and of stealing in the dwelling-house to the value of 40s., and be convicted of the simple larceny. (1 *Hale*, 561.)

Upon an indictment for burglary and larceny against two, one may be found guilty of the burglary and the larceny, and the other of the larceny only. (*R. v. Butterworth*, *R. & R.* 520.)

If, on the trial of an indictment for burglary, it shall appear to the jury that the prisoner did not complete the offence charged, but that he was guilty of an attempt to commit the same, the jury may find the prisoner not guilty of the felony charged, but guilty of an attempt to commit the same, and the prisoner may be punished as upon conviction upon an indictment charging an attempt to commit the same felony. (14 & 15 Vict. c. 100, s. 9. See *ante*, "*Attempt*," p. 344.)

7. Offence, &c.

Verdict where
several offences
charged.

Against several
defendants.

Attempts.

V. Punishment for.

By the 24 & 25 Vict. c. 96, s. 52, it is enacted, "whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." See "*Larceny*," Vol. III.)

Punishment for
burglary.

VI. Reward for Apprehending, &c., a Burglar.

It may be observed, that it is provided by stat. 24 Hen. VIII. c. 36, that there shall be no forfeiture of lands or goods for killing any person that attempts to commit burglary. But besides this indulgence to a person killing such an offender in defence of his house, there are special advantages and rewards for apprehending him. (See 7 Geo. IV. c. 64, s. 28; "*Rewards*," Vol. V.)

Indemnity and
reward.

VII. Offence of having House-breaking Instruments.

The 24 & 25 Vict. c. 96, ss. 58, 59, contain provisions with respect to the offence of burglary being committed by night with intent, &c. See tit., "*Larceny*."

Stat. 5 Geo. IV. c. 83, s. 4, for the purpose of preventing burglary and house-breaking, enacts, "That every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or out-building; or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; or having upon him or her any instrument with intent to commit any felonious act; every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any

Persons having
house-breaking
implements.

7. *Offence, &c.* inclosed yard, garden, or area, for any unlawful purpose, shall be deemed a rogue and vagabond within the true intent and meaning of this Act ; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months ; and every such picklock key, crow, jack, bit, and other implement ; and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon ; and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to his Majesty." This statute is expressly kept alive by the 14 & 15 Vict. c. 19, s. 15.
- Punishment.
- Implements, how disposed of.

In the case of *R. v. Brown*, 8 T. R. 26, (upon stat. 23 Geo. III. c. 88, now repealed by the above stat. 5 Geo. IV. c. 83, s. 1,) a warrant of commitment was holden defective, because it did not state that the defendant was apprehended with the implements of house-breaking upon him at the time of such apprehension. Lord Kenyon, C. J., said, that he yielded with great reluctance to the objection.

VIII. Forms.

- (1.) Warrant to apprehend a burglar where he actually stole goods.

County of } To the Constable of

FORASMUCH as A. I. of , in the county of , yeoman, hath this day made information and complaint upon oath before J. P. esquire, one of her Majesty's justices of the peace for the said county, that yesterday in the night the dwelling-house of him, the said A. I., at aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and one silver tankard of the value of five pounds, of the goods and chattels of him, the said A. I., feloniously and burglariously stolen, taken, and carried away from thence ; and that he hath just cause to suspect and doth suspect that A. O., late of , in the county of , labourer, the said felony and burglary did commit ; these are therefore in her said Majesty's name to command you, that immediately upon sight hereof you do apprehend the said A. O., and bring him before me to answer the premises, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the day of , in the year of our Lord

- (2.) Commitment for like offence.

[Commencement as usual, as ante, p. 11] : that the said C. D., on about the hour of twelve in the night, at , in the county aforesaid, the dwelling-house of A. B. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said A. B. in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take and carry away, and then and there in the said dwelling-house, twelve silver spoons of the goods and chattels of the said A. B., then and there feloniously and burglariously did steal, take, and carry away. These are therefore, &c. [as usual, as ante, p. 11, to the end.]

- (3.) Commitment for breaking out of a house.

[Commencement as usual, as ante, p. 11] : that the said C. D., on at the parish of , in the county of , being in the dwelling-house of A. B. there situate, twelve silver spoons of the goods and chattels of the said A. B., in the said dwelling-house then and there being found, then and there in the said dwelling-house feloniously did steal, take, and carry away ; and that the said C. D., so being in the said dwelling-house as aforesaid, and having committed the felony aforesaid, on the day and year aforesaid, about the hour of twelve in the night of the same day, at the parish aforesaid, in the county aforesaid, feloniously and burglariously did break out of the said dwelling-house, against the form of the statute in that case made and provided. These are therefore, &c. [as usual, as ante, p. 11, to the end.]

{ *THE jurors for our Lady the Queen upon their oath present, that C. D.,*
 to wit. } of , in the county of , labourer, on the day
 of , in the year of our Lord , about the hour of one in the night
 of the same day, at the parish of , in the county aforesaid, the dwelling-house
 of A. B. there situate, feloniously and burglariously did break and enter with intent
 the goods and chattels of the said A. B. [or, "of one G. H."] in the said dwelling-
 house then and there being, then and there feloniously and burglariously to steal, take,
 and carry away, and then and there in the said dwelling-house, one silver tea-pot of
 the value of five pounds, [here state the articles stolen as in an indictment for
 larceny] of the goods and chattels of the said A. B. [or, "G. H."] in the said
 dwelling-house then and there being found, then and there feloniously and bur-
 glariously did steal, take, and carry away, against the peace of our said Lady the
 Queen, her crown and dignity. [If bank notes or other valuable security be stolen,
 conclude also, against the form of the statute in that case made and provided.] [If
 there be any doubt as to the ownership of the house or goods, add other counts
 accordingly. Also, as burglary is a breaking and entering of a dwelling-house
 with intent to commit a felony, (and whether a felony at common law or by statute
 is immaterial, 1 *Hawk.* c. 38, s. 38,) if there be any doubt of the intent with
 which the offence was committed, it may be varied in different counts accord-
 ingly. See *ante*, p. 562.]

1. As to Burial Grounds.

(4.) Indictment
for burglary,
laying an intent
to steal as well as
actual theft.

{ *THE jurors for our Lady the Queen upon their oath present, that C. D.*
 to wit. } of , in the county of , labourer, on the
 day of , in the year of our Lord , about the hour of twelve
 in the night of the same day, at aforesaid, the dwelling-house of
 A. B. there situate, feloniously and burglariously did break and enter, with intent
 the goods and chattels of the said A. B. in the said dwelling-house then and there
 being found, then and there feloniously and burglariously to steal, take, and carry
 away, against the peace of our said Lady the Queen, her crown and dignity.

(5.) The like
against two
persons for a
burglary with
intent to steal.

Burials.

[15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19
 Vict. c. 79; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 21 & 22 Vict.
 c. 98; 22 Vict. c. 1; 10 & 11 Vict. c. 65; 23 & 24 Vict. c. 64; 25 & 26
 Vict. c. 100; 27 & 28 Vict. c. 97.]

- I. As to Burial Grounds, 565.
- II. Appointment and Constitution of Burial Boards, 574.
- III. Powers and Duties of Burial Boards, 583.
- IV. Burial of Poor Persons, 587.
- V. Exemptions from Tolls, 588.
- VI. Registers, 588.
- VII. Offences, 590.

I. As to Burial Grounds.

By 16 & 17 Vict. c. 134, s. 1. "In case it appear to her Majesty in council, upon the representation of one of her Majesty's principal secretaries of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such secretaries of state, should be prohibited, or that burials in any city or town, or

On representa-
tion of secretary
of state, her
Majesty in
council may
restrain the
opening of new
burial grounds,
and order

1. As to Burial Grounds.

discontinuance of
burials in
specified places.

Order not to
extend to burial
grounds of
Quakers or Jews,
unless expressly
included.

Burial not to
take place after
order in council
for discontinu-
ance.

Misdemeanour.

Not to extend to
cemetaries
established by
Act of Parlia-
ment, or new
burial grounds,
&c.

Protection of
burial grounds.

New burial
grounds not to be
opened contrary
to order in
council.

within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her privy council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require; provided always, that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered: provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish."

Sect. 2. "No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order."

Sect. 3. "It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanour."

Sect. 5. "The provisions of this Act shall not extend to authorize the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery established under the authority of any Act of Parliament, or in any burial ground or cemetery to be hereafter provided with the approval of one of her Majesty's principal secretaries of state, as herein mentioned."

District churchyards established under the Church Building Acts are subject to the orders and regulations of the Queen in council, and are not within the exception, "any cemetery established under the authority of any Act of Parliament," contained in 16 & 17 Vict. c. 134, s. 5. (*Reg. v. Maude and another*, 25 L. J. M. C. 45. See also 20 & 21 Vict. c. 81, s. 7.)

The provisions of "The Cemeteries Clauses Act, 1847," with respect to the protection of the cemetery, are incorporated with the 16 & 17 Vict. c. 134, through the 15 & 16 Vict. c. 85, s. 40. See *post*, p. 586, and tit. "Cemetery," *post*, 604.

Sect. 6. "Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of her Majesty's principal secretaries of state, no new burial

ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval."

Sect. 7. "All the provisions contained in the said Act of the last session of parliament, chapter eighty-five 'to amend the Laws concerning the Burial of the Dead in the Metropolis,' from section ten to section forty-two (both inclusive) of the said Act, and also in sections forty-four, fifty, fifty-one, and fifty-two of the said Act, shall extend and be applicable to and in respect of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein and otherwise, as if such sections were re-enacted in this Act, and the words 'in the metropolis,' wherever they occur in such sections, or any of them, were omitted; and section forty-nine of the said Act shall extend to all cemeteries already established and hereafter to be established under the authority of parliament in like manner as to those mentioned in schedule (B) to that Act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: provided always, that in all cases in which any burial board shall provide a new burial ground under the said Act of the last session of parliament or under this Act, that new burial ground shall be divided into consecrated and unconsecrated parts in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be sanctioned by one of her Majesty's principal secretaries of state; and when any burial board shall by virtue of section thirty of the said Act build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of burial service by persons not being members of the said church as may be approved of by one of her majesty's secretaries of state."

By 30 & 31 Vict. c. 133, s. 9, any person who gives land to be added to a churchyard may reserve the right of burial in a portion not exceeding 50 square yards, or one-sixth of the whole.

Sect. 10. "The exclusive right of burial, and of placing monuments and gravestones as aforesaid shall be considered to be the real estate of the giver, his heirs and assigns, and no body shall be buried, or monument or gravestone placed in the land in which such rights have been granted, except by consent of the owner thereof for the time being, but no such reservation shall give the right to bury the body of any person not entitled to be buried in consecrated ground, and the bishop of the diocese, and all persons acting under his authority, shall have the same right and power to object to the placing, and procure the removal of any monumental inscription within the ground so reserved as he has to object to or procure the removal of any monumental inscription in any consecrated ground: provided always, that the consent of the owner for the time being shall not be required for the burial of a deceased owner, or of a wife or widow of any deceased owner who has been buried or shall be about to be buried in such ground."

Sect. 11. "Such reserved portion shall not be included in any order in council under the Burial Acts for closing the churchyard to which it belongs, but it may be closed upon a separate order founded on a special report that the ground is in such a state as to render any further interments therein prejudicial to the public."

1. As to Burial Grounds.

Certain provisions of Metropolitan Burial Act, 15 & 16 Vict. c. 85, extended to parishes, &c., not in the metropolis.

Any burial board building a chapel for burials according to the rites of the Church of England also to build a chapel for persons not being members of the Church of England.

Reservation of rights by giver of land for burial ground.

(30 & 31 Vict. c. 133).

*1. As to
Burial
Grounds.*

Orders in council may be varied by like orders.

Division of fees between incumbents of parishes and ecclesiastical districts.

Churchwardens, after order, or at any time, upon requisition of ten ratepayers, to convene vestry meeting, to determine whether a burial ground shall be provided,

(15 & 16 Vict. c. 85).

Power to churchwardens, without requisition of ratepayers, to call vestry meetings for providing burial grounds.

Where order in council has been made, or notice given to apply to the privy council for closing burial grounds, churchwardens shall call a meeting of vestry.

By 18 & 19 Vict. c. 128, s. 1, "It shall be lawful for her Majesty, by and with the advice of her privy council, from time to time to postpone the time appointed by any order in council for the discontinuance of burials, or otherwise to vary any order in council made under any of the said recited Acts or this Act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived,) as to her Majesty, with such advice as aforesaid, may seem fit; and every order of her Majesty in council made before the passing of this Act for varying any order previously made under the said Acts, or any of them, shall be deemed valid and effectual in law."

By 15 & 16 Vict. c. 85, s. 35, "Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this Act as he was entitled to in respect of interments in the old burial ground."

Sect. 10. "Upon the requisition in writing of ten or more ratepayers of any parish in the metropolis in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under this Act for the parish; and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting; and if it be resolved by the vestry that a burial ground shall be provided under this Act for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal secretaries of state." (Extended beyond the metropolis by 16 & 17 Vict. c. 134, s. 7, *ante*, 567.)

By 18 & 19 Vict. c. 128, s. 3, "The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish; and where any order in council has been made before the passing of this Act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed after the passing of this Act, convene a meeting of the vestry for the purpose aforesaid; and where at any time hereafter notice is given of the intention of the secretary of state to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the said Acts as amended by this Act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited Act shall be applicable to vestry meetings convened under this enactment."

Sect. 10. "If the ratepayers assembled at any vestry duly convened under the provisions of this Act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial

ground to be provided for their parish, under the provisions of this Act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited Acts notwithstanding, and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this Act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited Acts and this Act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish."

Sect. 18. "In every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses."

By 20 & 21 Vict. c. 81, s. 23, "It shall be lawful for her Majesty, upon the representation of one of her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and every such order in council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates."

An invalid order intended to be made under the 20 and 21 Vict. c. 81, s. 23, cannot be used in support of subsequent proceedings. The Act applies to vaults or places of burial under the care of persons, as places of burial, at the time the Act passed, and cannot be extended to places which were bad at a former time, but which have since ceased to be used for such purposes. (*Foster v. Dodd*, 1 *Law Rep. Q. B.* 475; 35 *L. J. Q. B.* 136.)

By 22 Vict. c. 1. After reciting that by the 20 & 21 Vict. c. 81, s. 23, it was enacted that it should be lawful for her Majesty, upon the representation of one of her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens, or such other persons as might have the care of any vaults or places of burial from preventing them becoming or continuing dangerous or injurious to the public health; and such churchwardens or other persons should do, or cause to be done, all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof should be paid out of the poor rates of the parish, it is enacted that, "where it appears to one

1. As to Burial Grounds.

If ratepayers resolve, land for new burial ground may be conveyed and settled as old burial ground.

(18 & 19 Vict. c. 128.)

Burial board or churchwardens to keep in order closed burial grounds, &c.

Expenses to be taken out of poor rate, &c.

Orders in council may be issued, on representation of secretary of state, so as to prevent vaults, &c., being dangerous to health.

1. As to Burial Grounds.

It is a misdemeanour to obstruct churchwardens acting under order of secretary of state.

of her Majesty's principal secretaries of state on the representation of any person authorized by him to inspect any vaults or place of burial in relation to which an order in council has been or shall have been issued under the said recited enactment, that any acts which, by such order in council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such order in council it shall be lawful for such secretary of state, by writing under his hand, to authorize and direct the churchwardens of the parish in which such vaults or place of burial may be situate, forthwith to do or complete the acts in such order in council mentioned, or such of them as remain undone, and such order of the secretary of state shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises, to which the order in council relates, as if the said acts had, by the order in council, been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any persons who shall obstruct such churchwardens, or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanour."

Sect. 2. "This Act shall be read, together with the said Act 20 & 21 Vict. c. 81, and the Burial Acts therein mentioned, as one Act." (See *Foster v. Dodd, ubi sup.*)

Power to sell or lease unused, unconsecrated ground.

Sect. 24. "The trustees of unconsecrated ground or buildings, for the purposes of a cemetery or burial ground where burials shall have been discontinued, are empowered to let, lease, or sell parts thereof, where no interments have been made."

Joint burial ground for parishes.
Burial ground to be the burial ground of the parish or parishes for which it is provided.

By 15 & 16 Vict. c. 85, s. 23, *post*, "The vestries of parishes may concur in providing one burial ground for the common use of such parishes."

Sect. 32. "From and after the consecration, as is mentioned in s. 30 of this Act, of any burial ground provided under this Act [or 16 & 17 Vict. c. 134, s. 7, *ante*, p. 567] (except any portion thereof intended not to be so consecrated), or where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorize, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received; and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively; and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively

Fees of ministers.

Fees of clerk or sexton.

would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained."

Sect. 36. "Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this Act, are by law or custom payable to the churchwardens of any parish, or to trustees, or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this Act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees, or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and moneys received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability."

As to the employment of a chaplain for joint burial ground, see *post*, p. 581.

Sect. 50, "Where under any local Act fees on interments in any burial ground of any parish in the metropolis are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this Act, or any Act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister." (Extended beyond the metropolis by 16 & 17 Vict. c. 134, s. 7, *ante*, p. 567.)

Sect. 44. "It shall be lawful for one of her Majesty's principal secretaries of state from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this Act as to him may seem proper, for the protection of the public health and the maintenance of public decency, and the burial boards, and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations."

By 18 & 19 Vict. c. 128, s. 8, "It shall be lawful for one of her Majesty's principal secretaries of state from time to time to appoint and authorize any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the secretary of state under the said Acts, or any of them, to ascertain whether such regulations have been observed and complied with."

By 20 & 21 Vict. c. 81, s. 10, "It shall be lawful for her Majesty, by order made by and with the advice of her privy council, on the representation of one of her Majesty's principal secretaries of state, from time to time to establish such regulations as to her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in schedule (B) to the Act fifteenth and sixteenth Victoria, chapter eighty-five, and in respect of the like burials in any cemetery established under the authority of any local Act of Parlia-

1. As to Burial Grounds.

Fees payable to churchwardens and others for parochial purposes.

Incumbent's compensations to be payable to the churchwardens where the fees on burials are now paid to them, and the incumbents are not entitled.

Secretary of state may make regulations as to burial grounds, &c.

Secretary of state may direct inspection of burial grounds.

Orders in council may be made for regulating burial grounds, &c.

1. As to Burial Grounds.

Fees for service done in unconsecrated portion of burial ground to be identical as for consecrated portion.

Power for incumbent or churchwardens to convey chapel.

Interpretation of terms.

Parish.

Appointment of burial board where there are ecclesiastical districts.

ment; and every such order in council shall be published in the *London Gazette*; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations."

Sect. 17, "No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton."

By 15 & 16 Vict. c. 85, s. 51. "Where any burial ground in which interment is discontinued under this Act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connection with such chapel, shall cease." (Extended by 16 & 17 Vict. c. 134, s. 7).

Sect. 52. "In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say—

"'Parish' shall mean every place having separate overseers of the poor, and separately maintaining its own poor:"

This Act, therefore, gives to a parish having separate overseers of the poor, and separately maintaining its own poor, the power of appointing a burial board, and the fact of such a parish being divided into three separate parishes for all ecclesiastical purposes, under the 58 Geo. III. c. 45, does not take such power away from the old parish, and, therefore, where the old parish in such a case had appointed a burial board, the court granted a *mandamus* to the overseers of the old parish to pay to the burial board out of the poor rates of the entire parish the expenses which they had incurred. (*Reg. v. Overseers of Walcot St. Swithin*, 2 B. & S. 571; 31 L. J. M. C. 217; see *post*, 580.)

But then the 18 & 19 Vict. c. 128, ss. 12 and 13, (see *post*), enables an ecclesiastical district to appoint a burial board if it had previous to the Act a separate burial ground. If a burial board, however, is appointed under this Act, it does not appear that the powers of a burial board already appointed for the old and larger parish are to cease.

And by the 20 & 21 Vict. c. 81, s. 5, (see *post*), an ecclesiastical district not separately maintaining its own poor, and which has no separate burial ground, "may" appoint a burial board. The word may is, it would seem, there used permissively, and is not imperative. (*Reg. v. Walcot St. Swithin*, 2 B. & S. 571.)

Where three parishes in a borough and a hamlet constituted a union, and before the order forming the union the three parishes were incorporated for the relief of the poor under a body called the court of guardians, and they had not separate overseers, nor did they separately maintain their own poor, but the hamlet had separate overseers and separately maintained its own poor; it was held that the union of these parishes and this hamlet for the purpose of providing a common burial ground was within the 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, for s. 52 of the former Act was not intended to exclude every parish which had not separate overseers, or did not separately maintain its own poor, but to include all such places as do so under the head of parishes. (*Reg. v. Burial Board of St. Peter, &c., Sudbury, E. B. & E.* 264; 27 L. J. Q. B. 232.)

1. *As to
Burial
Grounds.*

- “Ratepayers,” shall mean the persons for the time being assessed to and paying rates for the relief of the poor of the parish : “Ratepayers.”
- “Incumbent” and “minister” shall, in respect of any fee made payable to an incumbent or minister under this Act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district, in case such district has a burial ground at the passing of this Act, and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese : “Incumbent.”
“Minister.”
- “Churchwardens” shall mean also chapelwardens, or other persons discharging the duties of churchwardens : “Churchwardens.”
- “Overseers” shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor : “Overseers.”
- “Vestry” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under an Act of the fifty-ninth year of King George the Third, chapter twelve, ‘to amend the Laws for the Relief of the Poor,’ or elected under an Act passed in the second year of King William the Fourth, chapter sixty, ‘for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain parishes of England and Wales,’ or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry :” “Vestry.”

By a private Act, the township of Sunderland was made a distinct parish, for which a vestry consisting of twenty-four members was to be triennially elected for certain specified objects, such as preserving order in the new parish church, rating the inhabitants for repairing the church, for paying the rector and parish-clerk, and the salary of the scavenger, &c., with power to make bye-laws and rules relating to the church, and was made the only governing body of the parish; it was held that such vestry was a vestry within the general words of the 52nd section of 15 & 16 Vict. c. 85. (*Reg. v. Peters*, 6 E. & B. 225; *sub nom. Re Sunderland Vestry*, 25 L. J. Q. B. 271.) But where a body called a select vestry was elected under a private Act of Parliament, but were merely in fact the board of guardians of the poor under another name, and performing only the duties of such guardians, and the passing of that Act did not affect the old practice of the parish with regard to the meeting of the general vestry, and the exercise of its functions as regarded the government of the parish; it was held that the election of the burial board was in the vestry at large, and not the select vestry constituted under the local Act. (*Ex parte Urquhart*, 7 E. & B. 575; 26 L. J. Q. B. 213.)

“Clerk” shall mean the clerk appointed pursuant to this Act by any burial board appointed under this Act.” “Clerk.”

1. *As to Burial Grounds.*

Provision for transfer to a burial board of a burial ground provided under Church Building Acts.

By 20 & 21 Vict. c. 81, s. 7, "Where a burial ground has been provided for any parish under any of the Acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board, and thereupon the same shall be vested in, and be under the care and management of such board, and shall be subject to the provisions of the hereinbefore recited Acts and this Act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned Acts and this Act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the Acts herein recited and of this Act in respect to the unconsecrated portions of burial grounds."

Vestry of parish in which burial ground is closed may purchase such burial ground if not belonging to parish.

Sect. 8. "It shall and may be lawful for the vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate."

II. Appointment and Constitution of Burial Boards.

By 16 & 17 Vict. c. 134, s. 7, *ante*, p. 567, the 15 & 16 Vict. c. 85, is to be read as if the word "metropolis" were omitted.

In case vestry agree to provide a burial ground, board to be appointed.

By 15 & 16 Vict. c. 85, s. 11, in case of a resolution by the vestry that a burial ground should be provided, under s. 10, for the parish, "the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one-third, or as nearly as may be one third (to be determined among themselves), shall go out of office yearly, at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate re-appointment: provided always, that the incumbent of the parish shall be eligible to be appointed and re-appointed from time to time as one of the members of the said board, although not a ratepayer of the parish; provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry."

Resignation of members.

By 23 & 24 Vict. c. 64, s. 4, "Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of her Majesty's principal secretaries of state." See 18 & 19 Vict. c. 128, s. 12, *post*, p. 578.

By 15 & 16 Vict. c. 85, s. 12, "Any vacancies in the board may be filled up by the vestry when and as the vestry shall think fit."

By 18 & 19 Vict. c. 128, s. 4, "Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein."

The burial board "may" fill up the vacancy in order that it may not be necessary to come to the Court of Queen's Bench for a *mandamus* if the vestry do not fill it up in due time. The word "may" is optional, and if they neglect to do so, it is still incumbent on the vestry to elect, and they may do so though the month has expired, provided the board have not already filled it up. (*Reg. v. Overseers of South Weald*, 5 B. & S. 391; 33 L. J. M. C. 193.)

By 20 & 21 Vict. c. 81, s. 27, "No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error."

Sect. 4. "In case it appear to her Majesty in council, upon the petition of the local board of health of any district established under the 'Public Health Act,' or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her privy council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts

2. Appointment, &c., of 'Burial Boards.'

Vacancies to be filled up by vestry.

Vacancies in burial board to be filled up by vestry within a month.

Resolutions, &c., of vestries not to be void by reason of irregularity of notices, &c.

Local board of health may, by order in council, be constituted a burial board.

**2. Appointment, &c., of
Burial
Boards.**

hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorization of any vestry shall be requisite: provided always, that notice of such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the 'Public Health Act, 1848.'

Local board may
be burial board.

By the 21 & 22 Vict. c. 98, s. 49, "In any district where a vestry of any one or more parish or place comprised therein, having a known or defined boundary, adopts the 20 & 21 Vict. c. 81, 'An Act to amend the Burial Acts,' the local board may, at the option of such vestry, be the burial board for the execution of the said Act, and shall thereupon have all the powers, duties, rights, and obligations of a burial board under the said Act."

Expenses to be
paid out of the
poor's rate.

By 15 & 16 Vict. c. 85, s. 19. "The expenses incurred or to be incurred by the burial board of any parish in carrying this Act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish; the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under this Act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorize to be expended for such purpose; and the overseers or other officers authorized to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are authorized to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct."

Local board may
levy rates for
their expenses as
burial board.

By 23 & 24 Vict. c. 64, s. 1, "Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act, in the district for which they may have been so constituted a burial board, or for paying any monies borrowed or annuities granted under the authority of the said Acts, or any interest or monies borrowed, or for providing a sinking fund for the re-payment of such monies, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy, as part of the general district rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid or any of them."

District rate.

Burial rate.

Sect. 2. "Any money required by any such commissioners as aforesaid, who shall have been constituted a burial board for defraying the expenses of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any monies borrowed, or annuities granted under the authority of the said Acts, on any interest on monies borrowed, or for providing a sinking fund for the re-payment

of such monies, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the commissioners, as such burial board, may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be, from time to time, necessary for the purposes aforesaid, or any of them."

Sect. 3. "The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by monies raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively, and any surplus of the monies raised by any rate made under this Act, and of the income of any burial ground provided by means of monies raised or paid under the provisions of this Act, which may remain after payment of the expenses, and monies which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act."

By 17 & 18 Vict. c. 87, s. 1, "Her Majesty, upon the petition of the town council of any borough, may order in council that powers be vested in the council of such borough for providing places of burial under this Act;" and by s. 2, "Upon the making of any such order of her Majesty in council as aforesaid, in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose," and the provisions of the 15 & 16 Vict. c. 85, except the provisions relating to the constitution, incorporation meetings, entries of proceedings, and accounts of burial boards shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment, which may be provided by such council under this Act in like manner as the same are applicable to any parish, and the burial board thereof, and to any burial ground, and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorization of the vestry of any parish shall be requisite.

By 18 & 19 Vict. c. 128, s. 19, "Nothing in this Act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament."

Sect. 20. "Any local board of health acting as or created a board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by this Act or by the secondly recited Act are or can or may be had, enjoyed, or exercised by any burial board therein named."

By 20 & 21 Vict. c. 81, s. 22, "Any money required by the council of any borough for the purpose of defraying the expense of executing the Acts hereinbefore recited, or any of them, or this Act, or for paying any monies borrowed under such Act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the Act passed in

2. Appointment, &c., of Burial Boards.

Improvement rate.

Accounts.

Surplus.

In boroughs, town council may be burial board.

Act not to abridge powers of local boards of health, &c.

Local boards of health to exercise powers of this Act.

Power of councils of boroughs to make a separate rate for burial and expenses.

2. *Appointment, &c., of Burial Boards.*

Meetings of the board.

Quorum of meetings of the board.

Board may appoint and remove officers, &c.

Sanction of vestry not required for expenditure and other acts of burial board in certain cases.

Burial boards may be appointed for parish, &c. (not separately maintaining their own poor) which have had separate burial grounds.

the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six."

By 15 & 16 Vict. c. 85, s. 13, "It shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours' notice, the board for any special purpose mentioned in such writing, and to meet at such time as shall be appointed therein.

Sect. 14. "At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board."

Sect. 15. "The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business."

By s. 18, auditors, who are to report to the vestry, may be appointed.

By 18 & 19 Vict. c. 128, s. 6, "If the vestry of any parish shall refuse or neglect to authorize the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of her Majesty's principal secretaries of state; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorize such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said Act of the fifteenth and sixteenth years of her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained."

Sect. 12. "The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground, and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor. See 23 & 24 Vict. c. 64, s. 4, *ante*, 575, and 20 & 21 Vict. c. 81, s. 5, *post*, 579.

A township having separate overseers, and separately maintaining its own poor, and forming a parochial chapelry, is a parish, and when divided into separate districts with separate burial grounds, under 58 Geo. III. c. 45, & 59 Geo. III. c. 154, forms separate parishes; so that when the burial board under this section formed subsequently to

the above division a burial ground for the whole parish, both the incumbent of the original chapelry in respect of his district, and the incumbent of the subsequently formed chapelry in respect of his district, were held entitled to the burial fees in respect of the corpses of the persons dying in their several districts respectively. (*Day v. Peacock*, 18 C. B. (N. S.) 702; 34 L. J. C. P. 225.)

Sect. 13. "Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorized to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor; and such overseers or persons authorized as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid: such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor: provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid."

Where a district of a parish not separately maintaining its own poor, is entitled, under sect. 12, by reason of its having a separate burial ground, to appoint a separate burial board, the rest of the parish, exclusive of the district, may appoint a burial board for itself; and a rate made for the purposes of the burial board on the part of the parish, exclusive of the separate district, is good. (*Viner v. Churchwardens, &c. of Tonbridge*, 28 L. J. M. C. 251.)

By 20 & 21 Vict. c. 81, s. 5, "The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of her Majesty: provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been

2. Appointment, &c., of Burial Boards.

Provision for expenses of burial boards of places not separately maintaining their own poor.

By levying rates.

Validity of rate.

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

6 & 7 Vict. c. 37,
7 & 8 Vict. c. 94,
19 & 20 Vict.
c. 104.

2. *Appointment, &c., of
Burial
Boards.*

or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute, or be liable,) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said Burial Acts, or any or either of them: provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively."

The enactment that the vestry, &c., "may" appoint a burial board is, it would seem, permissive, and not imperative. (*Per Crompton, J., Reg. v. Overseers of Walcot Parish*, 31 L. J. M. C. 220.)

Under the provision that all the powers of any other vestry or meeting and burial board should then cease and determine, so far as relates to any parish or district, where a parish has been divided into separate parishes for ecclesiastical purposes under the 58 Geo. III, c. 45, and the vestry of the old parish collectively has appointed a burial board, and established one burial ground for the whole parish, and the vestry of one of the new parishes has also appointed a burial board under the 20 & 21 Vict. c. 81, s. 5, the court granted a *mandamus* to the overseers of the old parish to levy a rate upon such new parish, and to pay the burial board of the new parish, pursuant to their certificate, the expenses such new board had incurred. (*Reg. v. Walcot St. Swithin*, 31 L. J. M. C. 221; see *ante*, 572.)

Probably, if the case ever arises, the proviso by which the powers of the vestry or burial board of the old parish are to cease on the appointment of the new board would be construed to contain an exception of vested interests, so far as is necessary to enforce liabilities already incurred by the old board in respect of the various exercise of their powers of borrowing money, and charging the poor rates with its re-payment. (*Semble, Reg. v. Walcot St. Swithin*, 31 L. J. M. C. 224.)

Loans charged on
poor rate.

By 15 & 16 Vict. c. 85, ss. 20 and 21, provision is made for raising money by way of loan charged on poor rate. These sections are supplemented by 20 & 21 Vict. c. 81, ss. 18, 19, 20, and 21.

Improvement
commissioners as
local board may
mortgage
improvement rate
or burial rate.

By 25 & 26 Vict. c. 100, s. 1, "Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough who shall have been constituted a burial board for any district, may, with the approval of the commissioners of her Majesty's treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leivable within the district, such sums of money as may be required by the burial board for the purposes of the burial Act within the district."

Sect. 2. "The clauses and provisions of 'The Commissioners Clauses Act, 1847,' with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof."

Monies raised,
and the income
arising from
burial ground, to
be applied

By 15 & 16 Vict. c. 85, s. 22, "The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid,

shall be applied by the board in or towards defraying the expenses of such board under this Act; and whenever, after re-payment of all monies borrowed for the purposes of this Act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this Act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish."

By s. 23, the vestries of parishes may concur in providing one burial ground for the common use of such parishes. See *ante*, 570.

By 20 & 21 Vict. c. 81, s. 1, "All acts authorized to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes." (See 18 & 19 Vict. c. 128, s. 6, *ante*, 578.)

Sect. 2. "Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement, and upon such union being so determined all the provisions of the said Acts and this Act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said Acts."

By 15 & 16 Vict. c. 85, s. 39, "Where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned."

By 18 & 19 Vict. c. 128, s. 11, "Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial

2. Appointment, &c., of Burial Boards.

towards
defraying
expenses.

Approval of a majority of vestries of parishes sufficient for acts done by burial boards acting for more than two parishes.

Joint burial boards may be dissolved.

Arrangements between the incumbents of parishes as to employment of chaplain in joint burial ground.

How burial grounds are to be provided for united parishes.

2. *Appointment, &c., of
Burial
Boards.*

board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone."

The object of this provision was to enable a parish consisting of different parts united together for ecclesiastical objects to constitute a district for the purpose of appointing a burial board, and to bring the whole district into the class or category of places as defined by the 15 & 16 Vict. c. 85, and by that statute having the power to appoint a burial board for the one district by the vote of the one vestry, and not to create two distinct bodies having power, by virtue of the 15 & 16 Vict. c. 85, s. 23, to concur in providing one burial board in such manner as they shall mutually agree, and to agree as to the proportion in which such parish shall be chargeable. Therefore, where the parish of A. and the hamlet of C., constituted one parish for all ecclesiastical purposes, had one church for their joint use, and one burial ground adjoining the church, but respectively maintained their own poor, appointed their own overseers, surveyors of highways, assessors of taxes, and constables, and made out their own jury lists and lists of voters, and the rate-payers of each were accustomed to meet in one vestry, and to transact all the business usually performed in a vestry, with the exception of the above separate matters, such vestry having appointed a burial board, and obtained the approval thereof by the secretary of state, it was held that A. and C., were united parishes within the 18 & 19 Vict. c. 128, s. 11, and that the burial board was rightly constituted for the two together, and that an order made by the burial board upon the overseers of C., for the payment out of the poor rates of C. of the proportion payable by C. calculated according to the rateable value of the property in C. in comparison with that in A., of the sum required by the board for paying the interest on a principal sum borrowed on mortgage, for the purposes of providing, laying out, and inclosing a burial ground, and for laying aside a sum for providing a sinking sum, in order to pay off the debt, was good. (*Reg. v. Overseers of Coteskill*, 2 B. & S. 825; 31 L. J. Q. B. 219.) And it was also held that the proportionate sums made respectively payable by A. and C. from time to time were to be calculated according to the rateable value of the property in each, as and when it became necessary to raise the money (*ib.*), and all the expenses as well to meet the necessary expenditure for maintaining the burial ground as for the purpose of meeting the interest on money borrowed, should be raised by one tax rather than by two distinct taxations, one for ordinary, and the other for extraordinary expenditure (*ib.*).

By 20 & 21 Vict. c. 81, s. 9, "And whereas by the said Act of the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty-eight, it is enacted, that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry, of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as, under the Acts therein recited and that Act, are vested in the vestry of a parish or place separately maintaining its own poor, where any of the several parishes or places under

Burial boards not to be appointed for united parishes, &c., in cases provided for by 18 & 19 Vict. c. 128, without consent of secretary of state, where one of the places separately maintains its own poor or has a burial ground.

the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of one of her Majesty's principal secretaries of state; and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the secretary of state may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said Acts and this Act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted."

3. *Powers and Duties of Burial Boards.*

III. Powers and Duties of Burial Boards.

By 15 & 26 Vict. c. 85, s. 24, burial boards are incorporated.

By s. 25, every burial board shall, with all convenient speed, provide a burial ground, convenient of access, which may be within or without the parish or parishes, as the case may be, but no ground may be nearer than two hundred yards to any dwelling-house without the consent of the owner, lessee, and occupier of such dwelling-house. By 18 & 19 Vict. c. 128, s. 9, this distance is reduced to one hundred yards.

Burial boards are incorporated.

Burial ground not to be nearer than 100 yards to dwelling-house.

By s. 26, "For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes."

Board may, with approval of vestry, purchase land of cemeteries.

In case of the refusal of the vestry to act under this section, see 18 & 19 Vict. c. 128, s. 6, *ante*, 578.

By s. 27, the provisions of the Lands Clauses Consolidation Act, 1845, are incorporated, with certain specified exceptions.

By s. 28, the board, with the approval of the vestry, may sell and dispose of any lands purchased by them under this Act in which no interment shall have taken place, and the money to arise from such sale shall be applied to such of the purposes of this Act as the board shall think fit. See also 18 & 19 Vict. c. 128, *ante*.

By s. 29, the board, with the approval of the vestry, and of the guardians of the poor of the parish, if any, and of the Poor Law Board, may appropriate for a burial ground, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the

3. *Powers and Duties of Burial Boards.*

Burial boards may in certain cases purchase cemeteries which have been closed.

Orders in council to remain in force.

Recited Acts and this to be as one.

No obligation to build a chapel for persons not members of the Church of England when secretary of state, upon representation of three-fourths of vestry, declares it unnecessary.

Separate burial boards whose burial grounds adjoin may contract with each other for specific purposes.

churchwardens, or in the churchwardens and overseers of the parish, or in any trustees, &c., for the parish, or for any specific charity.

By 20 & 21 Vict. c. 81, s. 26, "Where any cemetery in which burials have, by order in council, under the hereinbefore recited Acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purposes of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery; and where in the like case any cemetery has been so purchased before the passing of this Act, the purchase thereof shall be deemed to have been lawful: provided always, that, notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery."

Sect. 30. "The hereinbefore recited Acts and this Act shall be construed together as one Act."

By 18 & 19 Vict. c. 128, s. 14, "And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church: be it enacted, that in any such case as aforesaid, where it shall appear to one of her Majesty's principal secretaries of state, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said secretary of state, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: provided always, that such secretary of state shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof."

Sect. 16. "That in any case where the burial boards appointed under the said recited Acts of the fifteenth and sixteenth and the sixteenth and seventeenth years of her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorized to be built by the said Acts, and that such chapels, when erected, shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of the said Acts or either of them, as the said burial boards shall mutually agree upon; and that the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs of providing burial grounds under the said Acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited Acts, it shall be lawful for such burial board, with the sanction of one of her Majesty's principal secretaries of state, to contract with any other

burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree, and that during the existence of any such agreement, such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively."

By 20 & 21 Vict. c. 81, s. 3, "Any burial board may, if they see fit, with the approval of one of her Majesty's principal secretaries of state, provide more than one burial ground, and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: where before the passing of this Act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said Acts."

Sect. 11. "It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited Acts and this Act, or any of them: provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively."

By 15 & 16 Vict. c. 85, s. 31, "Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act."

Sect. 33. "Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been so settled, then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish."

Sect. 34. "Every burial board under this Act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board, as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial, with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground,

3. Powers and Duties of Burial Boards.

Burial boards may provide more than one burial ground.

No wall or fence required between the consecrated and unconsecrated portions of burial ground.

Boundary marks to be provided.

Burial board may contract for works to be done.

Board may sell exclusive rights of burial vaults, and right to erect monuments.

Board to fix payments for interments in burial ground, and for exclusive right of burial vaults, and right to erect monuments.

3. Powers and Duties of Burial Boards.

Fees, &c., to be subject to the approval of secretary of state.

Power to vestry, with consent of bishop, to revise the fees to incumbent, &c., or to substitute a fixed payment.

Management to be vested in burial boards.

Certain provisions of 10 & 11 Vict. c. 65, incorporated with this Act.

Places may be provided for reception of bodies until interment.

Minutes of proceedings of board to be entered in a book.

and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground."

By 18 & 19 Vict. c. 128, s. 7, "All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said Act of the fifteenth and sixteenth years of her Majesty, shall be so fixed and settled, subject to the approval of one of her Majesty's principal secretaries of state; and no such fees, payments, or sums shall be altered or varied without such approval."

By 15 & 16 Vict. c. 85, s. 37, "It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this Act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, or sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board."

Sect. 38. "The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese."

Sect. 40. "The provision of 'The Cemeteries Clauses Act, 1847,' with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act." See *post*, 604, tit. "Cemetery."

By s. 41, burial boards may make arrangements for facilitating the conveyance of bodies to burial grounds.

Sect. 42. "It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act, and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish in the metropolis for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and such churchwardens and overseers may exercise all such powers as, under the Act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish." In case of the refusal of the vestry to act under this section, see 18 & 19 Vict. c. 128, s. 6, *ante*, 578. (Extended beyond the metropolis by the 16 & 17 Vict. c. 134, s. 7, *ante*, 557).

Sect. 16. "Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence,

without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred."

Sect. 17. "All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds."

4. *Burial of Poor Persons.*

Board to keep accounts, which shall be open to inspection.

Penalty for refusing to allow inspection.

IV. *Burial of Poor Persons.*

By 18 & 19 Vict. c. 79, s. 1. "That where the guardians of any union or parish, or any of their officers duly authorized in that behalf, or the overseers of any parish not under a board of guardians, shall undertake the burial of any poor person, or shall contribute money or other aid towards the same, and the burial cannot take place in the parish where, according to the provisions of the said Act, the same would have been required to take place, by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the guardians or overseers respectively are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground (some part of which has been consecrated) of or in some other parish as near as conveniently may be to the parish wherein the burial would have been required to take place according to the provisions of the said Act: provided, that in all cases of burial under the direction of the guardians or their officers, or of the overseers, as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said guardians or overseers for the burial of each such body to the person or persons who by such custom or under such Act of Parliament shall be entitled to receive such fee or fees."

Where burial ground of parish closed or overcrowded, guardians or overseers may bury in neighbouring parish.

Sect. 2. "The guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance; and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board, (unless the deceased person, or the husband or wife or next of kin of

Power to enter into agreements with cemetery companies or burial boards.

4. *Burial of Poor Persons.*

Construction of words to be as in 4 & 5 Will. IV. c. 76, &c.

Ordinary of diocese may consecrate the whole or part of land belonging to any parish for the burial of poor persons.

such deceased person, have otherwise expressly desired,) shall be lawful: provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the Poor Law Board shall approve."

Sect. 3. "The words contained in this Act shall be construed in like manner as in the Act of the fifth year of King William the Fourth, chapter seventy-six, and in the several Acts incorporated therewith."

By 20 & 21 Vict. c. 81, s. 6. "Where the guardians of any parish or union are or shall hereafter become possessed of any land suitable to the purposes of a burial ground, and the poor law board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorized or required by law to bury, it shall be lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes, and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the United Church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians, out of the common fund of such parish or union: provided nevertheless, that the guardians shall not be authorized to direct the body of any poor person to be buried in such grounds who, or whose husband, wife, or next of kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere."

V. Exemptions from Tolls.

Section 32 of 3 Geo. IV. c. 126, exempting funerals from tolls, extended to burials in burial grounds provided for the parish, although not within its limits.

By 20 & 21 Vict. c. 81, s. 14. "Whereas by section thirty-two of the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other Act or Acts of Parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date, the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township, or place in which he died under the Acts herein-before recited and this Act, or any of them, or under any other Act of Parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie."

Register of burials to be kept in every ground provided under 15 & 16 Vict. c. 85, or under this Act.

By 16 & 17 Vict. c. 134, s. 8. "All burials within any burial ground provided under the said Act of the last session of parliament or this Act shall be registered in a register book to be provided by the burial board providing such ground (or where the same is provided by the commissioners of sewers of the City of London then by such commis-

VI. Registers.

sioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the United Church of England and Ireland, whether in the portion so consecrated or in the portion not so consecrated the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books or copies or extracts therefrom shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of King William the Fourth, intituled 'An Act for registering Births, Deaths, and Marriages in England,' so far as such regulations relate to register books of burials kept by any rector, vicar, or curate."

By 20 & 21 Vict. c. 81, s. 16. "Whereas by the Act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelyard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that Act for such purpose: And whereas distinct registers are by law required to be kept in the burial grounds provided under the burial Acts: The recited enactment of the said Act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Acts of her Majesty hereinbefore recited and this Act, or any of them."

By 27 & 28 Vict. c. 97, s. 1. "All burials in any burial ground in England which are not now by law required to be registered, shall be registered in register books to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose, according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts in England."

Sect. 2. "Such register books shall be so kept for every such burial ground, by some officer or person to be appointed to that duty by the company, body, or persons to whom such burial ground belongs."

Sect. 3. "Copies of the register books kept under this Act for every such burial ground shall be from time to time made, verified, and signed by such officer or person as aforesaid, and sent by him to the registrar of the diocese wherein the burial ground to which the same relates is situate, to be kept with the copies of the register books of the parishes within such diocese."

Sect. 4. "If any such company, body or persons, or any such officer

6. Registers.

Entries to be evidence.

6 & 7 Will. IV. c. 86.

Section 4 of 52 Geo. III. c. 146 not to apply to burials in grounds provided under the burial Acts.

As to register books for burial grounds.

Copies to be sent to registrar for the diocese.

6. *Registers.*

Penalty for non-compliance with this Act.

Evidence.

or person as aforesaid, wilfully fail to comply with any of the provisions of this Act, they or he shall be guilty of an offence against this Act, and on summary conviction thereof before a justice of the peace, shall be liable for every such offence to a penalty not exceeding five pounds."

Sect. 5. "The register books kept under this Act, or copies thereof, or extracts therefrom, shall be received in all courts as evidence of the burials entered therein."

Sect. 6. "The register books kept under this Act shall as to searches therein and copies thereof, and extracts therefrom, be subject to the regulations of the Act 6 & 7 Will. IV. c. 86, 'For registering births, deaths, and marriages in England,' so far as these regulations relate to register books of burials kept by rectors, vicars, or curates."

Sect. 7. "In this Act the term 'burial ground' includes a vault or other place where any body is buried."

Sect. 8. "This Act may be cited as 'The Registration of Burials Act, 1864.'"

VII. *Offences.*

Penalty on persons burying contrary to the provisions of orders in council.

By 18 & 19 Vict. c. 128, s. 2, "If any person, after the time mentioned in any order in council under the said Acts or any of them, or this Act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds." This provision will probably be deemed cumulative to the 16 & 17 Vict. c. 134, s. 3, by which the above offence is made a misdemeanour." (See *R. v. Gregory*, 5 B. & Ad. 555; *R. v. Cranshaw*, Bell, C. C. 303; 30 L. J. M. C. 58.)

Penalty for obstructing inspector or violating regulations.

Sect. 8. "And if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorized to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect, or fail to observe and comply with any such regulation, or any regulation imposed by this Act, every person so offending shall upon summary conviction thereof before two justices forfeit and pay a sum not exceeding ten pounds."

By 20 & 21 Vict. c. 81, s. 10, "Any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial ground."

Persons wilfully destroying, &c. register book of burials guilty of felony.

Sect. 15. "That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this Act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony."

Bodies not to be removed from

Sect. 25. "Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordi-

nary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without license under the hand of one of her Majesty's principal secretaries of state, and with such precautions as such secretary of state may prescribe as the condition of such license; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the license for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds."

As to the penalty for non-compliance with the "Registration of Burials Act," (27 & 28 Vict. c. 97,) see *ante*, 590; and for refusal to allow inspection of books of burial board, see *ante*, 587.

The provisions of the "Cemeteries Clauses Act, 1847," as applicable to the protection of burial grounds, are extended to burial grounds. See 15 & 16 Vict. c. 85, s. 40, and 16 & 17 Vict. c. 134, and *post*, tit. "Cemetery," 604.

To bury a body in any burial ground after it has been closed by order in council is a misdemeanour under 16 & 17 Vict. c. 134, s. 3, *ante*, 566.

7. *Burial of Dead Bodies cast on Shore.*

burial grounds, save under faculty without license of secretary of state.

Protection of burial grounds.

Burial of Dead Bodies cast on Shore.

AS to the stealing, selling and preventing the burial of dead bodies, see *ante*, 467, tit. "Bodies."

As to the burial of a *felo de se*, see "*Homicide*," Vol. II.

The stat. 48 Geo. III. c. 75, after reciting, that "whereas no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds, for such dead human bodies as may be cast on shore from the sea by wreck or otherwise, in that part of the United Kingdom called England: and whereas it is expedient that provision should be made for the decent interment of such bodies," it is enacted, "that from and after the passing of this Act, the churchwarden or churchwardens, overseer or overseers of the poor for the time being of the respective parishes throughout England, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea, by wreck or otherwise, shall, and he or they is or are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish: provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith to cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within England are hereby required to bury such body or bodies."

48 Geo. III. c. 75.

Where dead bodies cast on shore, churchwardens, &c., inter them in churchyard.

In extra parochial places.

Sect. 2. "Every minister, parish clerk, and sexton of such respective Minister to

*Burial of
Dead Bodies
cast on Shore.*

perform funeral
service, &c.

Rewarding
persons finding
bodies, and
giving notice to
parish officers.

Penalty on not
giving notice.

Expenses to be
paid by church-
wardens, &c.

Who are to be
reimbursed by
county treasurer.

Penalty on parish
officers neglecting
to inter bodies.

parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes."

Sect. 3. "In case any person or persons shall find any such body or bodies cast on shore from the sea, by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of 5s. for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only: but nevertheless that no greater sum than 5s. shall be paid for any one notice, although there may be a greater number of such bodies than one."

Sect. 4. "In case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall for every such offence forfeit and pay the sum of five pounds."

Sect. 5. "All necessary and proper payments, costs, charges and expenses which shall be made or incurred in or about the execution of this Act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid."

Sect. 6. "And for the purpose of reimbursing him or them all such payments, costs, charges and expenses," it is enacted, "that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, (a) to order and direct (b) the treasurer for such county to pay such sum or sums of money to such churchwarden or churchwardens, overseer or overseers, constable or headborough, for his or their costs and expenses in or about the execution of this Act (after the same shall have been duly verified on oath), as to the said justice shall seem reasonable and necessary; and such treasurer shall and he is hereby authorized and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

Sect. 7. "In case any such churchwarden or churchwardens, overseer or overseers, constable or headborough, shall refuse or neglect to

(a) See form (No. 1), *post*.

(b) Where a party framed an order, purporting to be the order of a magistrate on the treasurer of a county, to reimburse one *Cose* the expenses of burying a dead body cast on shore: it was held by a majority of the judges, that this was a forgery,

though there was no such magistrate as the individual mentioned in the order, and though the order did not state *Cose* to be a parish officer, or that the expenses incurred were reasonable and necessary. (*R. v. Froud*, 1 B. & B. 300; 3 Moore, 645.)

remove or cause to be removed such body or bodies from the sea shore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this Act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of five pounds."

*Burial of
Dead Bodies
cast on Shore.*

Sect. 8. "All penalties and forfeitures which shall be incurred under this Act, if not paid on conviction, shall be levied and recovered by distress (a), and sale of the goods and chattels of the offender or offenders, by warrant (b) under the hand and seal of any justice of the peace for the county or place where the offence shall happen (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath), and the surplus of the money arising by such distress and sale shall be returned on demand to the owner of such goods and chattels after deducting the costs and charges of making, keeping, and selling the distress; and such penalties and forfeitures, when recovered, shall be paid to the informer or informers; and in case sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorized and required, by warrant under his hand and seal, to cause the offender or offenders to be committed to the common gaol or house of correction of such county or place, there to remain without bail or mainprize, for any time not exceeding two calendar months nor less than fourteen days, unless such penalties and forfeitures, and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied."

Recovery of
penalties.

Sect. 9. "In all cases where any conviction shall be had for any offence or offences committed against this Act, or against any order of sessions, or any matter in pursuance of this Act, the form of conviction shall be in the words or to the effect following; (that is to say)

Form of
conviction. (c)

*'BE it remembered, that on this day of in the
year of the reign of A. B. is convicted before one of his
Majesty's justices of the peace for the of having [as the offence shall
be] and I the said do adjudge him [or them] to forfeit and pay for
the same the sum of . Given under my hand and seal the day and
year aforesaid.'*"

Sect. 10. "If any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this Act, such person or persons may appeal to the justices of the peace at the first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person or persons appealing having first given ten days' notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith

Appeal. (d)

(a) See 28 & 29 Vict. c. 127, by which a committal may be had without a warrant of distress.

(b) See tit. "Warrant of Distress," Vol. V.

(c) Offences under this Act are within the scope of "Jervis' Act," 11 & 12 Vict. c. 43.

(d) See in general, *ante*, "Appeal."

*Burial of
Dead Bodies
cast on Shore.*

Proceedings not
to be quashed for
want of form (a).

Penalties to be
paid by persons
incurring same,
and not by
parish.

Lords of manors,
&c., to pay same
fee as heretofore
on interring
bodies, &c.

How expenses
of interment
defrayed.

after such notice entering into a recognizance, before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon ; and the said justices at such sessions, upon due proof of such notice and recognizance having been given and entered into, are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper ; and the said justices may, if they see cause, mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable ; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever."

Sect. 11. "Where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceedings relating thereto ; nor shall the party or parties distrained be deemed a trespasser or trespassers *ab initio*, on account of any irregularity that shall be afterwards done by the party or parties so distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage in an action upon the case."

Sect. 12. "All penalties and expenses attendant thereon, which shall be incurred under the provisions of this Act, shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this Act shall be wholly exempted therefrom."

Sect. 13, after reciting, that "whereas in cases of dead wrecks, wherein no living person is found, or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof, on trials at common law, of the right of such lords of manors to wrecks in such manors ;" it is enacted, "that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout England to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough, of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid ; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this Act, and credit to be given for the same by such overseers, churchwardens, constable, or headborough, in their accounts with the county to which such accounts shall be submitted ; any thing in this Act to the contrary thereof in anywise notwithstanding."

Sect. 14. "And for defraying the expenses of the removal and burial of such body or bodies as aforesaid, and all other expenses necessary for the execution of this Act," it is enacted, "that the justices of the peace at the general or quarter sessions may cause such sums of money as shall be necessary for all or any of the purposes aforesaid to be raised in the same manner as rates are directed to be raised by an Act made in the twelfth year of the reign of his late Majesty King George the Second, intituled "An Act for the more easy Assessing, Collecting, and Levying of County Rate." See *post*, tit. "County Rate."

(a) As to clauses of this nature, see *post*, "Conviction."

To the Treasurer of the county of
 I, J. P. Esquire, one of her Majesty's justices of the peace for the county of
 having inquired into and ascertained upon oath the payments, costs,
 charges, and expenses in the account annexed, amounting to the sum of
 incurred by the overseers of the poor of the parish of in the said
 county, by reason of a dead human body having been found cast by the sea on the
 shore of the aforesaid parish, on the day of one thousand
 eight hundred and , and incurred by the said overseers of the poor at
 the like sums as in cases of burials made at the expense of the said parish, do
 hereby order you immediately on sight thereof to pay unto A. O. overseer of the
 poor of the before mentioned parish, the said sum of according to an
 Act passed in the forty-eighth year of the reign of his late Majesty King George
 the Third, intituled "An Act for providing suitable interment in churchyards or
 parochial burying-grounds in England, for such dead human bodies as may be
 cast on shore from the sea, in cases of wreck or otherwise," and the same will be
 allowed you in your accounts. Given under my hand at , in the said
 county of this day of , in the year of our Lord
 one thousand eight hundred and J. P.

*Burial of
 Dead Bodies
 cast on Shore.*

(1.) Order for
 reimbursement
 on 48 Geo. III.,
 c. 75, s. 6.

{ BE it remembered, that on, &c. at, &c. A. B. of, &c. [farmer,] cometh
 to wit. { before me, J. P. one of her Majesty's justices of the peace for the said
 county, and informeth me, that C. D. late of in the said county,
 [labourer,] on the, &c. at, &c. the bank of, &c. did find a certain dead human body
 there cast on shore from the sea by wreck or otherwise, and did not, within six
 hours thereafter, give notice thereof to any one of the churchwardens or overseers of
 the said parish of , in which such dead human body was so found as
 aforesaid, or cause such notice to be left at the last or usual place of abode of any
 such churchwarden or overseer; contrary to the form of the statute in such case
 made and provided: Whereby, &c. [as usual to the end.]

(2.) Information
 on 48 Geo. III.,
 c. 75, s. 4, for
 finding dead
 human bodies
 cast on shore, and
 not giving notice
 thereof.

See the form given by the Act, ante, 593.

(3.) Conviction
 thereon.

[Same as the form (No. 2), but describing the offence thus]: that on, &c. at
 the parish of in the said county, a certain dead human body was cast
 on shore from the sea by wreck or otherwise, and notice thereof was then and there
 given to one C. D. the churchwarden [churchwarden or overseer, or if in an extra
 parochial place, constable or headborough,] of the said parish; and that the said
 C. D. well knowing the premises, did nevertheless then and there [refuse and]
 neglect to remove or cause to be removed the said body from the sea-shore to some
 convenient place prior to the interment thereof, for the space of twelve hours next
 after the said notice so given as aforesaid; contrary to the form of the statute in
 such case made and provided: Whereby, &c. [as usual to the end.]

(4.) Information
 against parish
 officers, on 48
 Geo. III. c. 75,
 for neglecting to
 inter a dead
 human body cast
 on shore.

Butcher.

BUTCHERS, victuallers, and other common dealers in victuals are liable to punishment for selling corrupt victuals, certainly if they do so knowingly, probably if they do not; *per Parke, B.*, in *Burnby v. Bollett*; (16 *M. & W.* 644;) for Lord *Coke* says, in 4 *Inst.* 261, "This court of leet may inquire of corrupt victual as a common nuisance," for by statute 51 Hen. III. s. 16, "A statute of the pillory and tumbrel, and of the assize of bread and ale," inquiry is to be made "if any butcher do sell contagious flesh, or that died of the murrain."

Selling
unwholesome
flesh.

A butcher that selleth swine's flesh measled, or flesh dead of the murrain, shall for the first time be grievously amerced; the second time suffer judgment of the pillory (*a*); the third time to be imprisoned and make fine; and the fourth time forswear the town. (*Ordinance for Bakers*, 1 *Hawk. Stat.* 1, p. 181.) As to how far this would be an offence at common law, see the cases as to selling bad bread, &c. *ante*, 472.

Not to kill or sell
on Lord's Day.

By stat. 3 Car. I. c. 1, if any butcher shall kill or sell any victual on the Lord's Day he shall forfeit six shillings and eightpence, one-third to the informer and two-thirds to the poor, on conviction before one justice, on his own view, or confession, or oath of two witnesses, to be levied by the constable or churchwarden. (See "*Lord's Day*," Vol. III.) An indictment against a butcher for selling meat on a Sunday should conclude against the form of the statute; but if the offender keep open shop, the usual method is to indict at the sessions for the nuisance. (*R. v. Brotherton*, 1 *Stra.* 702; "*Nuisance*," Vol. III.)

See now also tit. "*Adulteration of Articles of Food or Drink*," *ante*, p. 52.

Buttons.

[36 Geo. III. c. 60.]

Metal buttons.

METAL BUTTONS.—The first and indeed the only Act of Parliament to regulate the manufacture of metal buttons was passed in the year 1796 (36 Geo. III. c. 60). At the time of passing the 36 Geo. III. the manufacture and sale of metal buttons had been for many years a great branch of trade in this kingdom, but the increase of the manufacture had been greatly impeded by the fraudulent practice of marking the buttons as "gilt" or "plated," which, in fact, were not so, to the great injury of the purchaser and of the fair trader. This statute was therefore passed to regulate the sale of metal buttons, but the 20th section enacts it shall not extend to certain buttons.

Ordering false
marks on
buttons.

The first section of this statute, (36 Geo. III. c. 60,) enacts that no person who shall order or apply for any metal buttons from any manufacturer or maker of buttons shall direct the words *gilt* or *plated*, or any other word, letter, figure, mark, or device indicating the quality, to be printed, cast, stamped, or marked in or upon any part of such buttons, or any word, letter, figure, mark, or device, whether the same do or do not indicate the quality, to be printed, &c., or marked in or upon the underside of such buttons, unless such person do at the same

(*a*) This punishment of pillory is now abolished in all cases. IV. & 1 Vict. c. 23. (7 Will.

time order such buttons to be gilt with gold or plated with silver respectively; and no person shall procure or purchase any metal buttons not being so gilt or plated, having the words gilt or plated, or any other word, &c. or device printed, &c. or marked thereon, or any word, &c. printed, &c. on the underside, whether the same do or do not indicate the quality, knowing the same not to be so gilt and plated as aforesaid; on pain of forfeiting in every such case such buttons, and also five pounds for any quantity not exceeding twelve dozen, and if above, after the rate of one pound for every twelve dozen.

Sect. 2. "And no person shall print, cast, stamp, or mark, or cause to be so done, upon any part of any metal button, the words *gilt* or *plated*, or any other word, letter, figure, mark or device, indicating the quality, or on the underside, whether the same do or do not indicate the quality, unless such buttons are before *bond fide* plated with silver, or afterwards gilt with gold, or destroyed before sold; and no person shall put or affix upon any such buttons having the words *gilt* or *plated*, or other words, &c. or devices as aforesaid indicating the quality, on any part thereof, or on the underside, whether the same do or do not indicate the quality, any ornament whatsoever, unless those parts not covered thereby be *bond fide* plated or gilt before such ornament be put or affixed thereon. And no person shall put or pack, or cause to be put or packed for sale, upon any card, paper, or other substance, or sell or expose to sale any metal buttons, not being gilt or plated as aforesaid, if the words *gilt* or *plated*, or any other word, &c. or device as aforesaid, indicating the quality, be printed, &c. or marked thereon, or upon such card, (not being the pattern card,) paper, or other substance; or on the underside of such buttons, whether the same do or do not indicate the quality, knowing the same not to be so gilt or plated; on pain of forfeiting, in every such case, such buttons, and also five pounds for any quantity exceeding one dozen, and not exceeding twelve dozen; and if above twelve dozen, after the rate of one pound for every twelve dozen."

A conviction upon this clause, charging that the defendants did the act "unlawfully and fraudulently, contrary to the form of the statute," is bad, without expressly charging that they did it "knowingly;" and such defect is not cured by a proviso in the statute, that no conviction for any offence in the Act should be set aside for want of form, or through the mistake of any fact, circumstance, or otherwise, provided the *material* facts alleged were proved; for this in effect requires all material facts to be alleged, and knowledge is a material fact to constitute such an offence. (*R. v. Jukes*, 8 T. R. 536.)

Sect. 3. "And no person shall print, &c. or mark, or cause so to be done, in or upon any metal button, any word, letter, figure, mark, or device indicating the quality thereof, except the words *gilt* or *plated*; or shall pack or cause to be packed for sale in or upon any card, (except the pattern card,) paper, or other substance, or parcel, or offer or expose to sale, or cause to be sold or exposed to sale any metal buttons having any word, &c. or device indicating the quality thereof, other than the words *gilt* or *plated*, printed, &c. or marked thereon; on pain of forfeiting such buttons, together with five pounds for any quantity exceeding one dozen, and not exceeding twelve dozen; and if exceeding twelve dozen, after the rate of one pound for every twelve dozen."

Sect. 4. "Provided, that nothing herein shall extend to inflict any fine, penalty, or punishment upon any person, who shall print, &c. or mark, or cause to be printed, &c. the words *double gilt* in or upon any metal buttons, or put, place, or pack for sale in or upon any card (except the pattern card), paper, or other parcel, or expose to sale any such buttons, having the words *double gilt* thereon; provided continually from the time of gilding thereof gold shall remain put and equally spread upon the upper surface of the said buttons, exclusive of the

Buttons.

Procuring
buttons with
false marks.

No marks to be
used but such as
express the real
quality.

Nor any buttons
to be packed with
false marks.

No other than
words *gilt* or
plated to be used

Except words
double and *treble*
gilt.

Buttons.

edges, in the proportion of ten grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall be equal to the superficies of a circle twelve inches in diameter; or who shall print, &c. the words *treble gilt* in or upon any metal buttons, or put upon any card, &c. or expose to sale any metal buttons having the words *treble gilt* thereon, having fifteen grains to the like quantity of buttons as aforesaid, on the like superficies as aforesaid; anything herebefore said to the contrary notwithstanding."

Except the pattern card.—The defendant was convicted upon the above statute for unlawfully and fraudulently placing for sale upon certain cards and papers divers dozens of metal buttons marked with the words *double gilt* and *treble gilt*, the same not being so gilt within the meaning of the statute; but the conviction did not negative the exception introduced in the clause, that the buttons had not been exposed to sale in this instance *upon the pattern cards*; wherefore the court quashed the conviction. (*R. v. Jukes*, 8 T. R. 542.) As to negating exceptions in a statute, see *post*, tit. "*Conviction*," and 11 & 12 Vict. c. 43, s. 14.

Penalty on making false bills of parcels, &c.

Sect. 5. "And if any person shall make out, send, or deliver, for, with, or in relation to, any metal buttons, any list, bill of parcels, or invoice expressing therein any other than the real quality of such buttons, knowing the same, he shall forfeit twenty pounds."

Penalty on making buttons of different qualities.

Sect. 6. "No person shall knowingly intermix, or cause to be intermixed, any metal button or buttons that shall not be *bonâ fide* gilt or plated, upon any card (except pattern card), paper, or other substance, whereon or wherein any metal button or buttons so gilt or plated shall be put, nor intermix the same in any other manner, on pain of forfeiting such buttons, and also five pounds for any quantity exceeding one dozen, and not exceeding twelve dozen; if exceeding twelve dozen, one pound for every twelve dozen."

What gilt and plated buttons.

Sect. 7. "And for the better ascertaining what shall be deemed a gilt or plated button, no metal buttons shall be deemed gilt buttons unless continually, from the time of gilding thereof, gold shall remain equally spread upon the upper surface thereof, exclusive of the edges, in the proportion of five grains to a superficies of a circle twelve inches in diameter; and no metal buttons shall be deemed to be plated, unless the superficies of the upper surface thereof be made of a plate of silver fixed upon copper, or a mixture thereof with other metals, previous to the same being rolled into sheets or fillets."

Recovery and application of penalties.

Sects. 8, 14, 15, and 16. One justice, where the offence is committed or the offender resides, may, by warrant, cause such metal buttons as shall be liable to forfeiture under this Act to be seized, and to keep them in safe custody, for the purpose of producing the same in evidence upon any prosecution or action, and when no further necessary, such justices shall order such buttons to be destroyed. And two justices where any offender shall reside, or where any offence shall be committed, may hear and determine the same, who, on information or complaint, within three calendar months, shall summon the party accused and witnesses on each side, and examine into the facts, and on proof either by confession, or oath of one witness, shall give judgment for the pecuniary penalty with costs, to be allowed by such justices, and shall levy the same by distress (a), and cause sale thereof, if not redeemed within five days inclusive of the day of seizure; half to the informer or person suing, and half to the poor, and for want of sufficient distress, shall commit such offender to gaol where the information shall be laid, for any time not exceeding three calendar months, unless such penalty and costs be sooner paid.

(a) See *post*, tit. "*Warrant*," Vol. V.

Sect. 9. "If any person shall think himself aggrieved by the judgment of such justices, he may (on giving security with sufficient surety to the amount of such penalty and costs, together with such further costs as shall be awarded in case such judgment be affirmed) appeal to the next sessions where such conviction shall be made, who may summon and examine witnesses, and hear and finally determine the same, and award costs as they shall think reasonable."

Buttons.

Appeal.

Sect. 10. "Provided that the said justices, and also such sessions, may mitigate any such penalty, so as not to reduce the same below one-half; or where such penalties shall be less than forty pounds, below twenty pounds."

Mitigation.

Sects. 11 and 12. And the conviction may be in the following form (*mutatis mutandis*), as the case may be, which shall be effectual without stating the case, or the facts, or the evidence, in any particular manner.

Form of conviction.

BE it remembered, that on the _____ *day of* _____ *, in the year of our*
Lord _____ *at* _____ *in the county of* _____ *A. I. came before*
us J. P. and K. B., two of his Majesty's justices of the peace for the said county,
[city, or place, as the case may be,] and informed us that A. O. of
on the _____ *day of* _____ *, now last past, at* _____ *in the said*
county, [city, or place, as the case may be; here set forth the fact for which the
information is laid]: Whereupon the said A. O., after being duly summoned to
answer the said charge, appeared before us on the _____ *day of* _____ *,*
at _____ *in the said county, [city, or place,] and having heard the charge*
contained in the said information, declared he was not guilty of the said offence
[or, as the case may be, did not appear before us pursuant to the said summons];
[or "did neglect and refuse to make any defence against the said charge;"] but
the same being fully proved before us upon the oath of A. W., a credible witness,
[or as the case may be,] acknowledged and voluntarily confessed the same to be
true; and it manifestly appeared to us that the said A. O. is guilty of the offence
charged upon him in the said information; we do therefore hereby convict him of
the offence aforesaid, and do declare and adjudge that he, the said A. O., hath
forfeited the said buttons, together with the sum of _____ *of lawful money of*
Great Britain, for the offence aforesaid, to be distributed as the law directs, accord-
ing to the form of the statute in that case made and provided. Given under our
hands and seals the _____ *day of* _____ *.*

And no such conviction shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever, provided the material facts alleged in the conviction be proved to the satisfaction of the said court.

Sect. 13. "Witnesses not appearing, having been duly summoned, without reasonable excuse, to be allowed by such justices, or refusing to be examined on oath, shall forfeit five pounds."

Witnesses not appearing.

Sect. 17. "Any person may be a witness notwithstanding his being an inhabitant of the parish or place where the offence shall be committed."

Inhabitants may be witnesses.

Sect. 18. "And if any person liable to any of the offences aforesaid shall, before information against him, discover to two justices the persons by whose order he did the act which subjected him to such penalty, so as such person be convicted thereof, he shall not be liable to the penalty, but shall be entitled to a moiety of the penalty as other informers."

Offenders discovering by whom employed, indemnified.

Sect. 19. "Provided also, that if any maker of buttons, who shall have ordered any metal buttons to be gilt, shall before the burnishing thereof appear before two justices, and prove by one witness that he ordered the said buttons to be gilt in manner required by this Act, and delivered gold sufficient for that purpose, or paid or contracted to pay a proper sum in that behalf, and shall afterwards prosecute such gilder or other person to conviction, he shall not be liable to any fine, forfeiture, penalty, or punishment, on account of the said buttons not

Manufacturers not liable to penalties in certain cases.

Buttons.

Buttons to which
Act not to
extend.

Limitation of
proceedings.

being gilt with gold ; anything herein contained to the contrary notwithstanding."

Sect. 20. "Provided also, that this Act shall not extend to buttons made of gold, silver, tin, pewter, lead, or mixtures of tin and lead, or iron tinned, or of *Bath* or *white metal*, or any of these metals inlaid with steel, or buttons plated upon shells."

Sect. 15. "No information shall be exhibited, or action brought, unless within three calendar months after the offence committed."

Sect. 21. "Every suit or action commenced against any person for what he may do in pursuance of this Act shall be commenced within six calendar months."

Forms.

The Act gives the form of conviction, *ante*, 599 ; and see the forms in *Paley on Convictions*, and *post*, tit. "*Conviction*."

Buying of Titles.

By the common
law.

BY the Common Law.—It seemeth to be a high offence at common law to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do, and on that consideration sells his pretensions at an under rate ; and it seemeth not to be material whether the title so sold be a good or bad one, or whether the seller were in possession or not, unless his possession were lawful and uncontested ; for all practices of this kind are by all means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties, who may often be unable or discouraged to defend their titles against such powerful persons, which perhaps they might safely enough maintain against their proper adversary. (1 *Hawk. c.* 86, s. 1.)

13 Edw. I. c. 49.

By Statute.—By stat. 13 Edw. I. c. 49, no person of the King's house shall buy any title whilst the thing is in dispute ; on pain of both the buyer and the seller being punished at the King's pleasure.

32 Hen. VIII.
c. 9.

And by stat. 32 Hen. VIII. c. 9, ss. 2, 6, none shall buy any pretended right in any land, unless the seller hath been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof, for one year next before ; on pain that the seller shall forfeit the land, and the buyer the value, half to the King and half to him that shall sue within one year.

Pretended Right.—But he who is in lawful possession may purchase the pretended title of any others.

One year before.—But no conveyance made by one who hath the uncontested possession and undisputed absolute propriety of lands, is in any way within the meaning of this statute. (1 *Hawk. c.* 86, s. 15.)

81 Eliz. c. 5, s. 4.

By stat. 31 Eliz. c. 5, s. 4, the offence of buying of titles may be laid in any county at the pleasure of the informer.

For other matters relating to buying of titles, see "*Maintenance*," Vol. III.

Calendar.

THE sheriff is to make a calendar of the prisoners in his gaol, and deliver it to the justices of gaol delivery, stating the prisoners and the crime for which they are detained in custody. (2 *Hale*, 122; see "*Gaol*," Vol. II.) By sheriff.

On the determination of the quarter sessions, the gaoler is required, on the second day afterwards, to transmit by the post, to one of her Majesty's principal secretaries of state a calendar, containing the names, the crimes and the sentences of every prisoner tried at such sessions, under penalty of twenty pounds if he shall neglect or refuse to transmit such calendar, or shall wilfully transmit a calendar containing any false or imperfect statement. (4 Geo. IV. c. 64, s. 20.) By gaoler.

As to calendar and lunar months, and as to time in general, see "*Calendar month*," "*Time*," Vol. V. Calendar month.

Cards.

[25 Vict. c. 22.]

THE duty in respect of playing cards, and the clauses and provisions relating to offences in respect of selling cards without a license or without stamped wrappers, and other offences relating to playing cards, are provided for by the 25 Vict. c. 22, and are contained in sections 27 to 38 inclusive. For these sections in full see *post*, tit. "*Excise*," Vol. II. pp. 278, 281. As to gaming, see "*Gaming*," Vol. II.; "*Disorderly House*," *post*.

Carriers.

[3 Car. I. c. 1; 29 Car. II. c. 7; 26 & 27 Vict. c. 125.]

BY the 3 Car. I. c. 1 (an Act for the better observation of the Lord's Day or Sunday) no carrier with any horse or horses, nor waggonman, carman, or wainman, with their respective carriages, by themselves or any other, was permitted to travel on the Lord's Day, on pain of twenty shillings, on conviction in six months before one justice, (or mayor,) on view or confession or oath of two witnesses, to be levied by the constable or churchwardens by distress, to the use of the poor, except that the justice may reward the informer with any sum not exceeding a third part. The Court of Queen's Bench, in *ex parte Middleton*, (3 B. & C. 164,) refused a rule for a *certiorari* to quash a conviction under this statute of the driver of a van travelling to and from London and York, for travelling on the Lord's Day, and in *Sandiman v. Breach*, (7 B. & C. 96,) held that the owners or drivers of stage coaches did not come within that Act, or the 29 Car. II. c. 7 (the Lord's Day Act;) but the fact that the 3 Car. I. c. 1 was only enacted to continue to the end of the first session of the next parliament, and that it was not continued Travelling on Sunday.

The owners or drivers of stage coaches not within 3 Car. I. c. 1; or 29 Car. II. c. 7.

Carriers.

3 Car. I. said to
be still in force.

by any Act passed in the next parliament, (the 16 Car. I.) does not seem to have been adverted to. The subsequent Act of the 29 Car. II. c. 7, so far as respects carriers *eo nomine* merely enacts that all the laws then in force concerning the observation of the Lord's Day be carefully put in execution. Thus it would seem that the 3 Car. I. c. 1, has dropped. However, in the 26 & 27 Vict. c. 125, one of the late Acts passed for the purpose of the revision of the statute law, the 3 Car. I. c. 1, is set down in the schedule thereto, as having only in part ceased to be in force, that part being the words, "This Act to continue to the end of the first session of the next parliament."

As to larceny by, see "*Larceny*," Vol. III.

As to their painting their names, &c. on the cart, &c., see "*Highways*," Vol. II.

It would seem that a common carrier for the carriage of passengers may, under certain circumstances, be indicted for refusing to carry one. (*Per Patteson, J.*, in *Pozzi v. Shipton*, 1 P. & D. 12.)

Cartridges.

[27 & 28 Vict. c. 48.]

THE Factory Acts are extended to the manufacture of cartridges by the 27 & 28 Vict. c. 48. See "*Factory*," Vol. II.

Cemetery.

[10 & 11 Vict. c. 65.]

Extent of Act.

BY "The Cemeteries Clauses Act, 1847," (10 & 11 Vict. c. 65,) it is provided, "That this Act shall extend only to such cemeteries as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorized thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act."

Interpretations in
this Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:—

"Special Act:—"

Sect. 2. "The expression 'the special Act' used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the making of a cemetery, and with which this Act shall be incorporated; and the word 'prescribed' used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if instead of the word 'prescribed' the expression 'prescribed for that purpose in the special Act' had been used; and the expression 'the lands' shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression 'the company' shall mean the persons by the special Act authorized to construct the cemetery."

"Prescribed:—"

"Lands:—"

"Company:—"

Interpretations in
this and the
special Act.

Sect. 3. "The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the mean-

ings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say.)

Cemetery.

" Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number :

Number :

" Words importing the masculine gender shall include females :

Gender :

" The word ' Person ' shall include a corporation, whether aggregate or sole :

" Person :"

" The word ' Lands ' shall include messuages, lands, and hereditaments of any tenure :

" Lands :"

" The expression ' the cemetery ' shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorized to be constructed :

" The cemetery :"

" The word ' Month ' shall mean calendar month :

" Month :"

" The expression ' Superior Courts ' shall mean her Majesty's superior courts at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the County of Durham :

" Superior courts :"

" The word ' Oath ' shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

" Oath :"

" The expression ' Established Church ' shall mean the united church of England and Ireland as by law established :

" Established Church :"

" The word ' County ' shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town :

" County :"

" The word ' Justice ' shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorized or required to be done by ' Two Justices ' the expression ' Two Justices ' shall be understood to mean two or more justices met and acting together :

" Justice :"

" Two justices :"

" The expression ' Quarter Sessions ' shall mean the quarter sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace."

" Quarter sessions."

And with respect to citing this Act or any part thereof, be it enacted as follows :—

Citing the Act.

Sect. 4. " In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression ' The Cemeteries Clauses Act, 1847. ' "

Short title of this Act.

Sect. 5. " For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates."

Form in which portions of this Act may be incorporated in other Acts.

And with respect to the making of the cemetery, be it enacted as follows :—

Making of cemetery.

Sect. 6. " Where by the special Act the company shall be em-

Cemetery.

Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

powered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorized, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof."

Errors and omissions in Act or schedule to be corrected by justices, who shall certify the same.

Sect. 7. "If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made."

Certificate to be deposited.

Copies of plans, &c. to be evidence.

Sect. 8. "Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof."

Sect. 26. "No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church."

Protection of Cemetery.

And with respect to the protection of the cemetery, be it enacted as follows:—

Penalty for damaging the cemetery.

Sect. 58. "Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds."

Penalty on persons committing nuisances in the cemetery.

Sect. 59. "Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds."

Annual account to be made up,

Sect. 60. "And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account

to be prepared, showing the total receipt and expenditure of all monies levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds."

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:—

Sect. 62. "The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively."

Sect. 64. "All things herein or in the special Act, or any Act incorporated therewith, authorized or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices."

Sect. 65. "Every person who upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury."

And with respect to affording access to the special Act, be it enacted as follows:—

Sect. 66. "The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive and he and the company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her Majesty, intituled 'An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.'"

Sect. 67. "If the company fail to keep or deposit any of the said copies of the special Act, as hereinbefore mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited."

Cemetery.

and a copy transmitted to the clerk of the peace, &c., and be open to inspection.

Recovery of damages and penalties.

8 & 9 Vict. c. 20, incorporated as to damages, &c.

All things required to be done by two justices may, in certain cases, be done by one. Persons giving false evidence liable to penalties of perjury.

Access to special Act.

Copies of special Act to be kept by company at their office, and deposited with the clerk of the peace, and be open to inspection.

7 Will. IV. & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

Central Criminal Court.

[4 & 5 Will. IV. c. 36; 7 Will. IV. and 1 Vict. c. 77; 9 & 10 Vict. c. 24; 14 & 15 Vict. c. 55; 19 Vict. c. 16; 25 & 26 Vict. c. 65.]

AS to the sessions in general and the practice of it, see "*Sessions*," Vol. V.

4 & 5 Will. IV.
c. 36.

The lord mayor of London, the lord chancellor, the judges, the aldermen, recorder and common serjeant of London, and such others as his majesty may appoint, to be judges of a court to be called the "Central Criminal Court."

His Majesty may issue a commission of oyer and terminer and gaol delivery for London and Middlesex, and certain parts of Essex, Kent, and Surrey.

By stat. 4 & 5 Will. IV. c. 36, intituled "An Act for establishing a New Court for the Trial of Offences committed in the Metropolis and parts adjoining," it is enacted, "That the lord mayor for the time being of the city of London, the lord chancellor or lord keeper of the great seal, and all the judges for the time being of his Majesty's Courts of King's Bench, Common Pleas and Exchequer, the chief judge and the two other judges in bankruptcy, the judges of the admiralty, the dean of the arches, the aldermen of the city of London, the recorder, the common serjeant, the judges of the sheriff's court of the city of London, for the time being, and any person or persons who hath or shall have been lord chancellor, lord keeper, or a judge of any of his Majesty's superior courts of Westminster, together with such others as his Majesty, his heirs and successors, shall from time to time name and appoint by any general commission as hereinafter stated, shall be and be taken to be the judges of a court to be called the 'Central Criminal Court,' to which his Majesty, and his heirs and successors, may direct his general commission as hereinafter mentioned; and which court shall have jurisdiction to hear, try and determine all offences committed or alleged to be committed as hereinafter specified."

Sect. 2. "It shall be lawful for his Majesty, his heirs and successors, from time to time to command and cause to be issued commissions of *oyer and terminer*, to inquire of, hear and determine all treasons, murders, felonies, and misdemeanours committed within the city of London and county of Middlesex, and those parts of the counties of Essex, Kent, and Surrey, within the parishes of Barking, East Ham, West Ham, Little Ilford, Low Layton, Walthamstow, Wanstead St. Mary, Woodford and Chingford, in the county of Essex; Charlton, Lee, Lewisham, Greenwich, Woolwich, Eltham, Plumstead, St. Nicholas Deptford, that part of St. Paul Deptford which is within the said county of Kent, the liberty of Kidbrook, and the hamlet of Mottingham, in the county of Kent; and the borough of Southwark, the parishes of Battersea, Bermondsey, Camberwell, Christchurch, Clapham, Lambeth, St. Mary Newington, Rotherhithe, Streatham, Barnes, Putney, that part of St. Paul Deptford which is within the said county of Surrey, Tooting, Graveney, Wandsworth, Merton, Mortlake, Kew, Richmond, Wimbledon, the Clink Liberty, and the district of Lambeth palace, in the county of Surrey; and also commissions of gaol delivery to deliver his Majesty's gaol of Newgate of the prisoners therein charged with any of the offences aforesaid, committed within the limits aforesaid; and it shall be lawful for the justices and judges of the Central Criminal Court aforesaid, or any two or more of them, to inquire of, hear, determine, and adjudge all such treasons, murders, felonies and misdemeanours, and all treasons, murders, felonies and misdemeanours which might be inquired of, heard and determined under any commission of *oyer and terminer* for the city of London or county of Middlesex, or commission of gaol delivery to deliver the gaol of Newgate, or which, in case the parts of the counties of Essex, Kent, and Surrey respectively comprised within the limits aforesaid had been counties of themselves, might have been inquired of, heard and determined under commissions of *oyer and terminer* and gaol delivery for such counties, and to deliver the said gaol of Newgate at such times and places in

the said city or the suburbs thereof as by the said commissions shall be appointed, or as the said justices and judges by virtue and in pursuance thereof, or any two or more of them, shall appoint, and to award and issue all precepts and process, and use and exercise all powers and authorities belonging to justices of *oyer and terminer* and gaol delivery: provided always, that such court shall have power and jurisdiction to proceed on every such commission so issued as aforesaid, and act under such commission until a new commission shall be issued."

Sect. 3. "The district situated within the limits of the jurisdiction hereinbefore established shall be deemed and taken to be, in all cases tried before the said justices and judges, one county for all purposes of venue, local description, trial, judgment and execution, not herein especially provided for; and that in all indictments and presentments preferred and tried before the said justices and judges the venue laid in the margin shall be as follows: 'Central Criminal Court, to wit,' and all offences which in other indictments would be laid to have been committed in the county where the trial is had, and all material facts which would be in other indictments averred to have taken place in the county where the trial is had, shall, in indictments prepared and tried in the said court, be laid to have been committed and averred to have taken place 'within the jurisdiction of the said court' " (a).

Sect. 4. "The sheriffs of the city of London and of the counties of Middlesex, Essex, Kent, and Surrey, respectively, shall execute and obey all precepts and process which the said justices and judges shall award, issue and direct unto them respectively, and shall, whenever required and commanded, summon and return from the said city of London and county of Middlesex, and from the parts of the said counties of Essex, Kent, and Surrey within the limits of this Act, a competent number of persons qualified according to law to inquire of, present and try all offences and other matters cognizable by the said justices and judges; and the persons so returned, whether taken wholly from the city of London or the said counties, or taken indiscriminately from the said city and the said counties, shall have authority to inquire of, present, hear, try and determine all such offences and other matters, and all issues and all matters of fact arising out of such trials or relating thereto, notwithstanding that such persons are not inhabitants of the city, county or place where such offences or other matters may be committed or arise; and any person having served upon any grand jury or petty jury summoned and returned from the said counties of Essex, Kent, and Surrey, under the authority of this Act, shall henceforth be exempt for and during twelve calendar months next after such service from serving upon any jury in any court (except the sessions of the peace) to be holden for the county in which such juror shall reside."

Sect. 5. "And whereas, for the more convenient distribution of prisoners, as well before trial as after, and also for rendering more effectual the punishment of imprisonment, it may be expedient that power should be given to appoint from time to time in what places of confinement within the limits of this Act such prisoners shall be kept in cus-

New district to be considered as one county, and venue to be "Central Criminal Court, to wit," &c.

Power to summon juries from London or from the counties, or from both indiscriminately, to try all offences cognizable by the Act.

As to jurors residing within the limits of the Act in Essex, Kent and Surrey.

His Majesty, by order in council, to appoint the places of confinement for prisoners.

(a) But every indictment should also contain a statement of the county in which the offence was committed, and the material facts took place. And where such statement was omitted, and the indictment having been removed, was tried by a Middlesex jury, the Court arrested

the judgment. (*Reg. v. Stowell*, 12 *L. J. M. C.* 111.) But indictments with the Central Criminal Court venue may still be tried in the county in which they show the offence to have been committed. (*Reg. v. Meyer and Albert*, *ib.* 117.)

*Central
Criminal
Court.*

tody ; be it therefore further enacted, that it shall be lawful for his Majesty, by and with the advice of his privy council, from time to time to order and direct in what gaol, house of correction, or other prison, being within the limits of this Act, any person or persons charged with or convicted of offences committed or alleged to have been committed within the limits of this Act shall be imprisoned or kept in custody ; and that when and so often as his Majesty, by and with the advice of his privy council, shall be pleased to give such orders and directions, the said justices and judges of *oyer and terminer* and gaol delivery, and all justices of the peace, coroners and other magistrates acting within the limits of this Act, shall commit all persons charged or convicted before them to such gaol, house of correction, or other prison as in such orders or directions shall be expressed and commanded, any law, usage or custom to the contrary notwithstanding ; provided nevertheless, and it is hereby declared, that the city, county or place in which the offence of such person or persons was committed or alleged to have been committed shall be liable to and charged with the expense of supporting and maintaining such prisoner during his imprisonment in such gaol, house of correction or other prison, at and after such rate as his Majesty, by and with the advice of his privy council, shall order and direct, and shall be paid by the treasurer of the said city, county or place in which such offence was committed or alleged to have been committed ; provided nevertheless, that the county of Middlesex and city of Westminster and liberty of the Tower of London shall not be liable to any charge for the support and maintenance of any prisoner charged with any offence in the said county, city or liberty, who shall be committed to his Majesty's gaol of Newgate."

Penitentiary at Milbank to be one of the prisons under this Act.

Sect. 6. "The general penitentiary at Milbank shall be considered one of the prisons in which his Majesty by virtue of this Act may, with the advice of his privy council, direct any persons charged or convicted of offences within the limits of this Act to be imprisoned and kept in custody."

Persons sentenced to imprisonment beyond the limits of this Act may be removed to the penitentiary at Milbank.

Sect. 7. "It shall be lawful for his Majesty, by an order in writing to be notified in writing by one of his Majesty's principal secretaries of state, to direct that persons who may be sentenced to imprisonment by any court or competent authority for any offence committed beyond the limits of this Act, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed, shall be removed to the penitentiary at Milbank, there to be imprisoned for and during their respective terms of imprisonment." [The 5 & 6 Will. IV. c. 38, s. 13, extends the power given by this section to offences committed within the limits of this Act.]

Regulations in all penitentiary Acts shall apply to prisoners confined there by the authority of this Act.

Sect. 8. "All provisions and regulations expressed and contained in all Acts made for the government of the general penitentiary at Milbank, and all powers given by such Acts for the confinement, employment, and management of convicts removed thereto in pursuance of such Acts, shall be applicable and made available in respect of all persons, who may be removed or sent to such penitentiary in pursuance of any order in council made by the authority of this Act, as fully, to all intents and purposes, as if the said regulations, provisions and powers were expressed and given by this Act." [The 5 & 6 Will. IV. c. 38, s. 14, extends the powers contained in penitentiary Acts to all prisoners confined therein.]

Persons convicted may be imprisoned either in the county gaol or in Newgate.

Sect. 9. "It shall be lawful to and for the said justices and judges of *oyer and terminer* and of gaol delivery, or any two or more of them, to commit any person or persons who shall be brought before them charged with any offence cognizable by such justices and judges under and by virtue of this Act, or who shall be convicted or attainted before them, to such gaol, house of correction, or other prison as may be specified in any order of council to be made by virtue of this Act, or if

no such order shall have been made, then to the common gaol, house of correction or other prison of the city, county or place to which such offender might have been committed if this Act had not passed, or to his Majesty's gaol of Newgate, there to remain until discharged by due course of law, or in execution of his or their respective judgments; and in case of such commitment to the said gaol of Newgate, execution of such judgments shall and may be had and done upon such person or persons by the sheriffs of the said city of London in the same way and as fully to all intents and purposes as if the offence of which such person or persons was or were convicted had been committed in the said city of London."

Sect. 10. "Until his Majesty shall be pleased, by and with the advice of his privy council, to order and direct in what gaol, house of correction or other prison persons charged with or convicted of offences committed or alleged to have been committed within the limits of this Act shall be imprisoned or kept in custody, it shall be lawful for any justice of the peace or coroner acting in and for the said counties of Essex or Kent, so far as relates to the said several parishes lying within their respective counties, to commit any person or persons charged with any of the offences aforesaid cognizable by the said justices and judges of *oyer* and *terminer* and gaol delivery by virtue of this Act to his Majesty's gaol of Newgate; and also for any justice of the peace or coroner acting in and for the said county of Surrey, so far as relates to the several parishes above mentioned lying within the said county of Surrey, to commit any person charged with any of the offences aforesaid cognizable by the justices and judges of *oyer* and *terminer* and gaol delivery by virtue of this Act to his Majesty's gaol of Horsemonger Lane or Newington, in and for the county of Surrey."

Sect. 11. "Every justice or coroner acting within the limits of this Act shall specify in the commitment that the person or persons charged are committed under the authority of this Act; and such justice or coroner shall in all such cases take the like examinations, informations, bailments and recognizances, and certify the same to the said justices of *oyer* and *terminer* and gaol delivery, as they are required by an Act passed in the seventh year of the reign of his late Majesty King George IV., intituled 'An Act for improving the Administration of Criminal Justice in England;' and any justice of the peace or coroner, in default of so doing, shall be liable to the same fines and penalties to be imposed by the said justices and judges of *oyer* and *terminer* and gaol delivery in the same manner as is mentioned in the said Act; and when any person or persons shall be committed to his Majesty's gaol for the county of Surrey for any offence cognizable by the said justices and judges of *oyer* and *terminer* and gaol delivery by virtue of this Act, by a commitment specifying that such person or persons is or are committed under the authority of this Act, the sheriff of the said county of Surrey, or the keeper of the gaol for the said county, shall, six days at least before the sitting of the next court of *oyer* and *terminer* and gaol delivery appointed under the authority of this Act, or at such other time as the said justices and judges of *oyer* and *terminer* and gaol delivery, or any two or more of them, shall from time to time direct, cause such person and persons with their commitments and detainers to be safely removed from the gaol of the said county of Surrey, without the issuing of any writ of *habeas corpus*, or other writ to the said gaol of Newgate, there to remain until delivered by due course of law."

Sect. 12. "It shall be lawful for any two of the said justices and judges of *oyer* and *terminer* and of gaol delivery to order and direct the costs and expenses of prosecutors and witnesses, in all cases where prosecutors and witnesses may be by law entitled thereto, to be paid by the treasurer of the county in which the offence of any person prosecuted would have been tried but for this Act; and that every such

Central Criminal Court.

Sheriffs of London may execute judgments.

Justices and coroners in Essex and Kent to commit offenders to Newgate, and justices and coroners in Surrey to commit offenders to Horsemonger Lane, and certify examinations to the court.

Justices and coroners to specify that persons are committed under this Act, and to take examinations, &c. as required under 7 G. IV. c. 64. See "*Examination*," Vol. II.

Power to remove prisoners from county gaol of Surrey to Newgate.

Power to order payment of expenses to prosecutors and witnesses.

Treasurer of

*Central
Criminal
Court.*

county, or his agent, to attend court to pay orders.

As to preferring bills of indictment before the grand jury.

Court of Lord Mayor and Aldermen of London may contract with justices of Essex, Kent, and Surrey, for support of their prisoners in Newgate.

If they cannot agree, the judges to settle the amount.

Sessions to be holden in London or the suburbs twelve times at least in every year.

Indictments found at the sessions of the peace may be removed before justices of *oyer and terminer* and gaol delivery (a).

treasurer or some known agent shall attend the said justices and judges of *oyer and terminer* and gaol delivery during the sitting of the court, to pay all such orders."

By sect. 13, no indictment was to be presented to the grand jury, unless the prosecutor had been bound by recognizance to prosecute, but that section was repealed by the 9 & 10 Vict. c. 24, s. 2, wherein it is enacted "that bills of indictment may be preferred by any person before the grand jury of the said court for any offence alleged to be committed within the jurisdiction of the said court, in the same manner as may be done before any other grand jury."

This is now however subject to the provisions of the "Vexatious Indictments Act," (22 & 23 Vict. c. 17). See *post*, Vol. III. "*Indictment.*"

Sect. 14. "It shall be lawful for the court of the lord mayor and aldermen of the city of London, having the government and ordering of the said gaol of Newgate, to enter into agreement with the justices of the peace for the said counties of Essex, Kent, and Surrey, for the support and maintenance in the said gaol of Newgate of any prisoner or prisoners so committed or removed thereto under the authority of this Act; and that the sum to be paid for the support and maintenance of such prisoner or prisoners in the said gaol of Newgate, and for their removal therefrom, shall be after such rate and in such manner as shall be settled and agreed by and between a committee of the said aldermen to be appointed from time to time by the said court of aldermen and a joint or separate committee of the magistrates of the said respective counties of Essex, Kent, and Surrey, to be appointed at the general or quarter sessions of the peace of the said counties respectively to be holden next after the first day of January in every year; and in case the said committee, or either of them, shall not make such settlement or agreement as aforesaid, then the rate and manner in which such support and maintenance shall be paid shall, on the application of the said committee of aldermen at any time after the expiration of one month from the said respective sessions, be fixed and determined by such of the said justices and judges of *oyer and terminer* and gaol delivery, or any two or more of them, as have or shall have been justices of his Majesty's superior courts of Westminster; and that the amount of such support and maintenance, to be ascertained in manner aforesaid, shall be paid by the treasurer of the respective counties of Essex, Kent, and Surrey, in such manner as the said justices and judges shall order and direct."

Sect. 15. "The said justices and judges of *oyer and terminer* and gaol delivery to be appointed under the authority of this Act, or any two or more of them, shall hold a session for the said city of London and county of Middlesex, and the parts of the counties of Essex, Kent, and Surrey hereinbefore mentioned, in the said city of London or suburbs thereof, at least twelve times in each and every year (and oftener if need be), such times to be fixed by general orders of the said court, which any eight or more of the said judges of his Majesty's courts of Westminster are hereby empowered to make from time to time."

Sect. 16. "It shall be lawful for his Majesty's Court of King's Bench, or any judge thereof, or any commissioner of *oyer and terminer* and

(a) This section does not affect the removal of indictments from the Central Criminal Court into the Queen's Bench. Such removal is entirely regulated by the 5 & 6 Will. IV. c. 33, (the *Certiorari* Act,) and a defendant removing such indictment

under the latter statute becomes liable, in case of conviction, to pay the prosecutor the costs occasioned by such removal. (*Reg. v. Hawdon*, 9 Dowl. P. C. 1007; 1 Q. B. 464; *post*, "*Certiorari.*")

The judges of the Central Criminal

gaol delivery under this Act, being a judge of any of the superior courts of Westminster, or the chief judge or any other judge of the Court of Bankruptcy, or the recorder for the said city of London for the time being, if such court, judge, or recorder shall think proper, to issue any writ or writs of *certiorari*, or other process, directed to his Majesty's justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, or either of them, commanding the said justices of the peace, or any or either of them, to certify and return into the said court of *oyer and terminer* and gaol delivery indictments or presentments found or taken before the said justices of the peace, or any of them, of any offences cognizable by virtue of this Act, and the several recognizances, examinations and depositions relative to such indictments and presentments, so that the same offences may be dealt with, tried and determined by the said justices and judges of *oyer and terminer* and gaol delivery; and also for the like purpose, by writ or writs of *habeas corpus*, to cause any person or persons who may be in the custody of any gaol or prison charged with any offences cognizable under this Act to be removed into the custody of the keeper of the gaol of Newgate."

The writs referred to in this section are special writs to remove indictments cognizable under the statute at once into the Central Criminal Court, without bringing them into the Court of Queen's Bench at all, and a writ will be granted to remove such an indictment for that purpose, in a case where the writ of *certiorari* (which would remove it into the Queen's Bench) is taken away. (*Reg. v. Sill*, 1 *Dear. C. C.* 10; 21 *L. J. M. C.* 214.) In that case the writ was granted to remove an indictment for false pretences found at sessions, notwithstanding it was forbidden by the 7 & 8 Geo. IV. c. 29, s. 53, to remove such an indictment by *certiorari*. It is now, however, to be observed that the above statute is repealed, and the corresponding section in the 24 & 25 Vict. c. 96, no longer continues the prohibition on the removal by *certiorari* of such an indictment.

Sect. 17. "The justices of the peace acting in and for the said cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, shall not, at their respective general or quarter sessions of the peace or any adjournment thereof, try any person or persons charged with any capital offence, or with certain offences committed or alleged to be committed within the limits of this Act," and specifically mentioned.

But this section is repealed by the 14 & 15 Vict. c. 55, s. 13, which enacts that such repeal shall not be construed to give authority to the said justices of the peace to try any person or persons for any offence which the justices of the peace acting in and for any county, riding, division, or liberty, are restrained from trying under the 5 & 6 Vict. c. 38.

Sect. 18. "Every recognizance which shall have been or shall be entered into for the prosecution before his Majesty's justices of the peace aforesaid of any person for any offence cognizable under this Act, and any recognizance for the appearance as well of any witness to give evidence upon any bill of indictment or presentment for any such offences as of any person to answer our lord the king for or concerning any such offence, or to answer generally before such justice of the peace,

Quarter sessions
restrained from
trying certain
offences.

This section
repealed.

Recognizances
for prosecuting,
giving evidence,
&c. before ses-
sions of peace to
be obligatory on
persons entering
into same to
prosecute, give
evidence, &c.,
before justices of
oyer and terminer
and gaol delivery.

Court have no power, as such, to issue any *habeas corpus*, or other process, to bring in a party who is in custody of the sheriff of Middlesex on a civil suit, in order that he may

be committed to Newgate, to be tried for a misdemeanour before that Court; and the above 16th section does not apply to such a case. (*R. v. Morgan*, 7 *C. & P.* 642.)

*Central
Criminal
Court.*

Notice of change of court to be given to parties entering into recognizances.

shall, in case any such writ of *certiorari* or *habeas corpus* be issued for the purpose of removing such indictment or presentment or such person so in custody as aforesaid, be obligatory on the parties bound by such recognizance to prosecute and appear and give evidence and do all other things therein mentioned with reference to the indictment or presentment of the person so removed as aforesaid before the justices and judges of *oyer* and *terminer* and gaol delivery acting by virtue of this Act, in like manner as if such recognizance had been originally entered into for prosecuting such offence, appearing, or giving evidence, or doing such other things before the said justices and judges of *oyer* and *terminer* and gaol delivery: provided that in cases of removal from the jurisdiction of justices of the peace for the said cities of London or Westminster, the liberty of the Tower of London, the borough of Southwark, or counties of Middlesex and Surrey, two days' notice, and in case of removal from the jurisdiction of the justices of the peace for the counties of Essex and Kent one week's notice, shall have been given either personally or by leaving the same at the place of residence as of which the parties bound by such recognizance are therein described, to appear before the court of *oyer* and *terminer* and gaol delivery instead of the said other justices: provided also, that it shall be lawful for the court, judge, or recorder who shall grant such writ of *certiorari* or *habeas corpus*, and it is hereby required that such court, judge, or recorder shall cause the party applying for such writ or writs, whether he be the prosecutor or party charged with such offence, to enter into a recognizance in such sum, and with or without sureties, as the court, judge, or recorder may direct, conditioned to give such notice as aforesaid to the parties bound by such recognizance to appear before the said court of *oyer* and *terminer* and gaol delivery instead of before the said other justices respectively, and to do such other things as such court, judge, or recorder shall direct."

Justices may deliver over indictments found at sessions to the justices of *oyer* and *terminer* and gaol delivery.

Sect. 19. "It shall be lawful for the said justices of the peace acting in and for the said cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and for the said counties of Middlesex, Essex, Kent, and Surrey, if they shall think fit, to certify, transmit, and deliver to the said justices and judges of *oyer* and *terminer* and gaol delivery any indictment or presentment found or taken before them at their said respective general or quarter sessions of the peace, or at any adjournment thereof, for any offence or offences cognizable by the said justices and judges of *oyer* and *terminer* and gaol delivery by virtue of this Act, in the same manner to all intents and purposes as the said justices of the peace might or could do if the said court of *oyer* and *terminer* and gaol delivery was holden in the county where such indictments or presentments were found or taken."

Justices to settle officers' fees, or a salary, and direct how same shall be paid.

Sect. 20. "It shall be lawful for the said justices and judges of *oyer* and *terminer* and gaol delivery, in sessions assembled, and they are hereby authorized and required to ascertain, make, and settle a table of fees and allowances to be received and taken by the several officers of the said court, and from time to time to alter and vary the same as may to them appear just and reasonable, which said table of fees and allowances shall be hung up in the court of sessions, and a copy thereof transmitted to the clerks of the peace of the said counties of Middlesex, Essex, Kent, and Surrey; or it shall be lawful for the said justices and judges to ascertain, make, and settle a salary in lieu of such fees and allowances, to be paid to the said officers or either of them for the performance of their respective duties, as to the said justices and judges of *oyer* and *terminer* and gaol delivery shall seem reasonable and just, and to order and direct how and in what manner and by whom such fees and allowances or salary shall be paid, and also to order and direct such portion as they shall think fit of the expense of preparing calendars and sessions papers, and of other expenses incident to this Act, to be

borne and paid by the treasurer of each of the said counties, and such portion shall be paid by such treasurers accordingly; provided nevertheless, that the county of Middlesex shall not be liable to any portion of the expense of preparing calendars or sessions papers, or of any other expenses incident to this Act, to which the said county would not have been liable in case this Act had not been passed."

SECT. 21. "Nothing herein contained shall hinder or prevent, or shall be construed to hinder or prevent, the justices of the peace for the said cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the said counties of Middlesex, Essex, Kent, and Surrey, from holding their respective general or quarter sessions of the peace in their respective jurisdictions during the sitting of the said court of *oyer* and *terminer* and gaol delivery to be held in pursuance of this Act; and that neither this Act, nor the commissions of *oyer* and *terminer* and gaol delivery from time to time to be issued under the authority of this Act, shall supersede, interfere with, or affect any other commission or commissions of *oyer* and *terminer* to be at any time issued by his said Majesty, his heirs, and successors in the said counties of Essex, Kent, and Surrey, or the jurisdiction by virtue thereof, nor hinder or prevent the justices of *oyer* and *terminer* to be from time to time appointed by any commission to be issued under the authority of this Act from holding their respective sessions at one and the same time, it being the true intent and meaning of this Act, that the justices to be named and appointed in and by any other commissions of *oyer* and *terminer* and gaol delivery to be hereafter issued in the said counties of Essex, Kent, and Surrey, shall have the like power and jurisdiction to inquire of, hear, and determine all offences by virtue of such commissions which they would have had if this Act had not been made: provided nevertheless, that they shall not be required or obliged to inquire of, hear, and determine, or to deliver the respective gaols or prisons of the same last-mentioned counties of any person or persons whose offence or offences are, can, or may be inquired of, dealt with, tried and determined under and by virtue of the commissions of *oyer* and *terminer* and gaol delivery, to be from time to time issued under the authority of this Act." (See "*Sessions*," Vol. V.)

Sessions of the peace not to be affected by the sessions holden in pursuance of this Act.

SECT. 22. "And whereas it is expedient that persons charged with certain offences committed on the high seas and other places within the jurisdiction of the admiralty of England, should speedily be brought to trial; be it therefore enacted, by and with the authority aforesaid, that it shall and may be lawful for the justices and judges of *oyer* and *terminer* and gaol delivery to be named in and appointed by the commissions to be issued under the authority of this Act, or any two or more of them, to inquire of, hear, and determine any offence or offences committed, or alleged to have been committed on the high seas, and other places within the jurisdiction of the admiralty of England, and to deliver the gaol of Newgate of any person or persons committed to or detained therein for any offence or offences alleged to have been done and committed upon the high seas aforesaid within the jurisdiction of the admiralty of England; and all indictments found and trials and other proceedings had and taken by and before the said justices and judges of *oyer* and *terminer* and gaol delivery shall be valid and effectual to all intents and purposes whatsoever; and that it shall and may be lawful

Authorizing court to try offences committed on the high seas (a).

(a) An accessory before the fact to a felony committed on the high seas within the jurisdiction of the admiralty of England, may be indicted and tried at the Central Criminal Court, by virtue of the stats. 7 Geo.

IV. c. 64, s. 9, and the above 22nd section, although the person charged as the principal offender has not been "committed to or detained in" the gaol of Newgate for his offence. (*Reg. v. Wallace*, 1 C. & M. 200.)

*Central
Criminal
Court.*

Saving the rights
and privileges of
London.

7 Will. IV. & 1
Vict. c. 77.

No report to be
made to her
Majesty of the
case of any capital
convict at the
Central Criminal
Court.

The judge before
whom any offend-
er already
under sentence
of death has
been tried, may
direct execution
to be done on
such offender.

The Court may
abstain from
pronouncing
judgment on
persons con-
victed of crimes
liable to the
punishment of
death, and order
the same to be
entered of
record.

for any three of the said justices and judges of *oyer and terminer* and gaol delivery to order and direct the payment of the costs and expenses of such prosecutions in manner prescribed and directed by the before recited Act of the seventh of George the Fourth." (See *ante*, tit. "*Admiralty*," p. 49.)

Sect. 23. "Nothing in this Act contained shall extend or be construed to extend to prejudice or affect the rights, interests, privileges, franchises, or authorities of the lord mayor, aldermen, and recorder of the city of London, or their successors, the sheriffs of the city of London and county of Middlesex, for the time being, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of making this Act the said lord mayor, aldermen, and recorder, for the time being, of the said city, did or might lawfully use or exercise; and that notwithstanding any practice or custom of the said city of London to the contrary, it shall be lawful for the lord mayor's court of the city of London to sit on any day on which any session of the peace, *oyer and terminer*, and gaol delivery shall be held within the said city; and that all proceedings of the said lord mayor's court that could or might have been had or taken if such sessions were not held, shall and may be had and taken, any practice, custom or law to the contrary notwithstanding."

By 7 Will. IV. & 1 Vict. c. 77, intituled "An Act to assimilate the Practice of the Central Criminal Court to other Courts of Criminal Judicature within the Kingdom of England and Wales with respect to Offenders liable to the Punishment of Death," (17th July, 1837,) reciting, that "it is expedient to assimilate the practice of the Central Criminal Court to other courts of criminal judicature within the kingdom of England and Wales with respect to offenders liable to the punishment of death;" it is enacted, "that from and after the passing of this Act it shall not be necessary that any report should be made to her Majesty, her heirs and successors, in the case of any prisoner convicted before the said Central Criminal Court, and now under sentence of death, or who may be hereafter convicted before such court and sentenced to the like punishment, previously to such sentence being carried into execution; any law, usage, or custom to the contrary notwithstanding."

Sect. 2. "With respect to offenders now under sentence of death, that in case any judge, being a judge of one of the superior courts of Westminster Hall, before whom any such offender has been tried, shall be of opinion that under the circumstances of such offender's case the sentence of the law ought to be carried into effect, it shall be lawful for such judge and he is hereby required, as soon after the passing of this Act as conveniently may be, to order and direct execution to be done on such offender at such time and place as he shall think fit (the time so to be appointed not being less than seven days nor more than twenty-one days from the making of such order); and thereupon the sheriff or other proper officer in whose custody any such offender shall be, shall carry such sentence into effect at such time and place as may be specified in such order."

Sect. 3. "That whenever any offender shall hereafter be convicted before the said court of any crime for which such offender shall be liable to the punishment of death, and the court shall be of opinion that under the particular circumstances of the case such offender is a fit and proper subject to be recommended for the royal mercy, it shall and may be lawful for such court, if it shall think fit so to do, to direct the proper officer then being present in court to require and ask (whereupon such officer shall require and ask) if such offender hath or knoweth any thing to say why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the court shall and may and is hereby authorized to abstain from pro-

nouncing judgment of death upon such offender, and instead of pronouncing such judgment to order the same to be entered of record, and thereupon such proper officer as aforesaid shall and may and is hereby authorized to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open court against such offender by the court."

Sect. 4. "That a record of every such judgment so entered as aforesaid shall have the like effect to all intents and purposes and be followed by all the same consequences as if such judgment had actually been pronounced in open court."

Sect. 5. "That whenever any offender shall hereafter be convicted before the said court of any offence for which such offender shall be liable to and shall receive sentence of death, and the said court shall be of opinion that under the circumstances of the case the judgment of the law ought to be carried into effect, it shall be lawful for the said court and such court is hereby required to order and direct execution to be done on such offender in the same manner as any court of assize is empowered to order and direct execution by the law as it stood before the passing of this Act."

By 9 & 10 Vict. c. 24, s. 2, provision is made for the preferring indictments before the grand jury, and the 4 & 5 Will. IV. c. 36, s. 13, is repealed. See for this provision, *ante*, 610.

By s. 3, it is recited that doubts have been raised as to the proper place of trial where indictments have been removed by writ of *certiorari* from the Central Criminal Court into the Court of Queen's Bench, and it is enacted, "That every writ of *certiorari* for removing an indictment from the said Central Criminal Court shall specify the county or jurisdiction in which the same shall be tried; and a jury shall be summoned, and the trial proceed in the same manner in all respects, as if the indictment had been originally preferred in that county or jurisdiction."

By s. 7, the rights of the city of London are saved.

By the 19 & 20 Vict. c. 16, the Court of Queen's Bench may order the removal and trial of indictments in the Central Criminal Court for offences committed outside the jurisdiction of the latter court.

Certiorari.

Such record to have same effect as if judgment pronounced.

Court to direct execution to be done on certain offenders.

Preferring bills of indictment before the grand jury.

Writs of *certiorari* of indictments into the Queen's Bench to specify place of trial.

Certiorari.

I. *The Nature of the Writ. Its Use. When it lies in general*, 616.

II. *What Proceedings Removable by, and on what grounds granted*, 621.

[5 & 6 Will. IV. c. 33, s. 1; 16 & 17 Vict. c. 30.]

III. *Within what Time it must be applied for*, 629.

[13 Geo. II. c. 18, s. 5; 60 Geo. III. c. 4, ss. 3, 4, 5.]

IV. *Mode of obtaining it. Notice of Application for, and Recognition required*, 632.

[21 Jac. I. c. 8, s. 7; 5 & 6 W. & M. c. 11; 5 Geo. II. c. 19, ss. 2, 3; 13 Geo. II. c. 18, s. 5; 5 & 6 Will. IV. c. 33, s. 2; 16 & 17 Vict. c. 30, ss. 5, 7.]

V. *Form and Requisites of Writ, and Delivery of*, 642.

[21 Jac. I. c. 8, s. 8.]

*Certiorari.*VI. *Effect of*, 644.VII. *Return to*, 645.VIII. *Quashing it*, 648.IX. *Proceedings after Removal*, 649.X. *Costs after Removal by*, 653.

[5 & 6 W. & M. c. 11, s. 3; 5 Geo. II. c. 19.]

XI. *Forms*, 661

I. The Nature of the Writ. Its Use. When it lies in general.

It is an undoubted prerogative of the crown to see that all inferior jurisdictions are kept within their proper bounds, and on that principle the whole doctrine of *certiorari* proceeds. (*R. v. Berkley*, 1 Ken. 81, 103.) And therefore the Court of Queen's Bench has by the common law in general a right to bring before it all records, in order to rectify wrong ones if rectifiable, and if not to quash them. This general jurisdiction is vested in this court and this court only; and though records of wrong judgments might be avoided in a collateral way, as nullities *coram non judice*, that is not sufficient, and the court will not permit such to exist (*Id.*) See however, *post*, 627.

Nature of the writ.

The *certiorari* is a writ issuing out of the crown office in the name of the king or queen regnant, and tested by the chief justice, which the Court of Queen's Bench, by virtue of its superintending authority over all courts of inferior criminal jurisdiction in the kingdom directs to the judges or officers of those courts, or to justices at sessions or out of sessions, commanding them to certify or return the records or proceedings in a judicial matter depending before them, to the end that the party may have the more sure and speedy justice before the queen, or such justices as she shall assign to determine the cause. (1 *Bac. Abr. Certiorari* [A]; *Com. Dig. Certiorari*.)

It is agreed that the Court of Queen's Bench having a general superintendency over all courts of inferior jurisdiction, may award a *certiorari* to remove the proceedings from any of them, except some particular statute or charter invest them with absolute judicature. (*Reg. v. Gillyard*, 12 Q. B. 527; 17 L. J. M. C. 153; *Hawk.* bk. 2, c. 27, s. 22. *Bac. Abr. Certiorari* [R]; *Com. Dig. Certiorari* [A 1].)

Justices of the peace may indeed deliver or send into the Queen's Bench, or remit to the assizes indictments found before them, or recognizances of the peace taken before them, or force recorded by them, without any *certiorari*. (*Dalt.* c. 195; *R. v. Turner*, 2 L. C. C. 265; *R. v. Wetherell*, R. & R. 381.)

If defendant is in custody, *habeas corpus* also.

If there be an indictment to be removed, and the defendant be in actual custody, it is usual and proper to have a *habeas corpus* to remove him, and a *certiorari* to remove the record, unless any statutory enactment provides a different course. (2 *Hale P. C.* 210; *R. v. Duchess of Kingston*, *Cowp.* 283.) See "*Habeas Corpus*," Vol. II.

Its use.

The use of a *certiorari* is for the superior court the better to consider and determine the validity of convictions, orders, appeals, proceedings on indictments, presentments, and other judicial proceedings, and to prevent an unfair or insufficient trial or judgment, or the execution of a wrongful judgment which it is thought would take place in the original jurisdiction; (2 *Hale*, 210;) but since the establishment of the Court of Crown Cases Reserved under the 11 & 12 Vict. c. 78, and the passing of the 20 & 21 Vict. c. 43, under which later Act justices of the peace state cases for the opinion of one of the superior courts at Westminster,

and the 12 & 13 Vict. c. 45, under which courts of quarter sessions state cases in appeals, the frequency of this writ is much diminished. (See 16 & 17 Vict. c. 30, c. 4.)

On the removal of an indictment the trial will be either at bar, or at *nisi prius* (see *Reg. v. Palmer*, 5 E. & B. 1024) by a jury of the county out of which the indictment is brought, unless otherwise provided by statute, [as for instance where the indictment is removed from the Central Criminal Court under 9 & 10 Vict. c. 24, s. 3, or into the same court, under the 19 & 20 Vict. c. 16,] and if a fair and impartial trial cannot be had in such county or jurisdiction the court will on a suggestion entered on the record order it to be tried in the next adjoining one. (3 Burr. 1330, 6 T. R. 195; *R. v. Holden*, 5 B. & Ad. 354.) A special jury may be obtained in the superior court in cases of misdemeanour, (4 Geo. IV. c. 50, s. 30, 5 T. R. 626; and see 16 & 17 Vict. c. 30, s. 4,) and more time for the trial may be thus obtained, or it may be brought on more expeditiously than in the inferior court. So after a special verdict on an indictment, the proceedings may be removed by *certiorari* in order to obtain the opinion of the superior court (2 Ld. Raym. 1577). And if it is necessary to issue process of outlawry against the defendant in those places where the justices' authority does not extend, the usual course is to remove the indictment, and proceed to outlawry in the Court of Queen's Bench. (2 Hale, 210.) See "*Process*."

Also on the part of an indicted defendant this writ may be of advantage for the purpose of enabling him to plead her Majesty's pardon, (2 Hale, 210,) and also to have a decision of the superior court on a demurrer in the court below; for the Court of Crown Cases Reserved have no jurisdiction to decide questions raised on demurrer. So also where the defendant is a public officer and his attendance is necessary where he resides (1 Chit. R. 571, notes), this will be desirable. And in order to compel a view of premises in respect whereof an indictment is preferred (1 Sess. Cas. 180, 2 Barnard, 214; see 16 & 17 Vict. c. 30, s. 4,) or to obtain a new trial on the merits if necessary, which an inferior tribunal cannot grant. (13 East. 416, n. Fort. 198.)

When it lies in general.—Except where a statute otherwise directs, this writ of *certiorari* lies in all judicial proceedings in which a writ of error does not lie (a), and it is a consequence of all inferior jurisdictions erected by Act of Parliament to have their proceedings returnable in the Queen's Bench. (*Groenvelt v. Burwell*, 1 Ld. Raym. 469; *R. v. Inhabitants of* —, in Glamorganshire, 1 Ld. Raym. 580; *R. v. Justices of Cashiobury*, 3 D & R. 35.) And therefore a *certiorari* lies to justices of the peace, even in such cases which they are empowered by statute finally to hear and determine; and the superintendency of the Court of Queen's Bench is not taken away without express words. (2 Hawk. c. 27, s. 23.)

The writ of *certiorari* may however be used as ancillary to a writ of error for the purpose of bringing up some proceedings not returned on the writ of error on diminution being alleged, and perhaps in some rare cases for the purpose of a writ of error being brought afterwards. (*Reg. v. Lees*, 27 L. J. Q. B. 403.)

1. *What it is, and use of.*

Place and mode of trial.

Special jury.

After verdict.

On part of defendant.

To obtain a view.

New trial.

When it lies.

(a) In this respect the proceeding by *certiorari* differs from a right of appeal. A *certiorari* always lies unless it is expressly taken away, and an appeal never lies unless it is expressly given by statute. (*R. v. Hanson*, 4 B. & Ad. 521.) The practice of taking away the *certiorari* by statute, which Lord Kenyon thought

had become too frequent, (see 8 T. R. 542,) did not begin to prevail till the beginning of the reign of Will. III., not long after the introduction of appeal to the sessions, which came into general use towards the latter end of the reign of Charles II. (*Paley*, *Conv.* 5th ed. by Macnamara, 403.)

1. *What it is,
and use of.*

Right to take
away only by
express
enactment.

The proceeding by *certiorari* differs from a right of appeal in this, that it always lies, unless it is taken away by express words, (*R. v. Gillyard*, 3 N. S. C. 207; 12 Q. B. 527; *R. v. Hanson*, 4 B. & Ald. 521.) while an appeal never lies unless it is expressly given by statute. (*R. v. Hanson*, *ubi sup.*)

For the *certiorari*, being a beneficial writ for the subject, cannot be taken away without express words. If, therefore, a statute authorizing a summary conviction before a magistrate, give an appeal to the sessions, who are directed to hear and *finally* determine the matter, it does not take away the *certiorari*, even after such an appeal made and determined. (*R. v. Jukes*, 8 T. R. 542.) So, although the Conventicle Act, (22 Car. II. c. 1.) enacted that "no other court whatsoever should intermeddle with any causes of appeal upon that Act, but that they should be *finally* determined in the quarter sessions *only*;" yet it was decided that the Court of Queen's Bench was not ousted of its right by *certiorari*. (*R. v. Moreley*, 4 Burr. 1040.) Also it was there said, that the words above mentioned only meant that the *facts should not be re-examined*. (*Id.*)

So where a *new* offence is created by statute and directed to be tried in an inferior court, if such court be established according to the course of common law, all the common law consequences attach upon the proceedings, one of which is, that the indictment may be removed into the Court of Queen's Bench. (*R. v. Wordley*, 4 M. & S. 508; *R. v. Hube*, 5 T. R. 542; and see *R. v. Rogers*, 5 B. & Ald. 773; *Hartley v. Hooker*, Cowp. 524.) Thus an indictment for non-repair of a highway ordered under the 5 & 6 Will. IV. c. 50, s. 95, is, notwithstanding the *certiorari* is taken away, removable in respect of any matter or thing done or transacted in or relative to the execution of the Act, since such indictment is found according to the course of the common law. (*Reg. v. Inhabitants of London*, 3 E. & B. 547; 23 L. J. M. C. 129.)

May be so taken
away though no
other mode of
appeal given.

But the writ of *certiorari* may be taken away by statute, although no appeal is given to the sessions. (*R. v. Justices of St. Albans*, 5 D. & R. 538; 3 B. & C. 698.) Or although an appeal is given to the sessions, and they make an order subject to a case. (*R. v. Middlesex*, 8 D. & R. 117; 4 D. & R. M. C. 41.)

And Court will
not directly or
indirectly
interfere.

And generally, when thus taken away, the court will not directly or indirectly in any manner enable a defendant to remove proceedings before it. (See *R. v. Eaton*, 2 T. R. 472; *R. v. Justices of Yorkshire*, 1 A. & E. 563.) Nor will they interfere so as to review the proceedings by *mandamus*. (*R. v. Yorkshire*, 5 B. & Ad. 1003; 3 N. & M. 23.)

Crown, when
bound.

And general words in an Act taking away the *certiorari* will not bind the crown, unless such an intention is to be collected from other parts of the Act. (*R. v. Allen*, 15 East, 333, 342; *R. v. Anon*, 2 Chit. Rep. 136; *R. v. Hube*, 5 T. R. 542; *R. v. Davies*, 5 T. R. 626; *R. v. Cumberland*, 6 id. 194.) And it seems that the attorney-general may in all cases have a *certiorari* on behalf of the defendant. (1 East, 303, n.; 4 Burr. 2458; but see *R. v. Burgess*, 1 Ld. Kenyon, 135; and see 16 & 17 Vict. c. 30, s. 4.) And this rule, that a statute taking away the *certiorari* does not bind the crown unless named, is not limited to cases where the crown has an actual interest, but extends to all prosecutions in the name of the Queen. And the rule is not defeated by the prosecutor having become nominally defendant, as where a conviction has been quashed at sessions, with costs to be paid by the prosecutor, and he seeks to quash the order of sessions. (*R. v. Boulbee*, 4 A. & E. 498, 499.)

Where order
made without
jurisdiction.

An enactment taking away the writ of *certiorari*, in respect of orders on convictions made under it, does not extend to an order or conviction made entirely without jurisdiction, though pretended to be made under the Act. (*Reg. v. Bolton*, 1 Q. B. 66; *Reg. v. Justices of St. Albans*, 22 L. J. M. C. 142; *Reg. v. Wood*, 5 E. & B. 49; 21 L. J. M. C. 130; *R. v.*

4 17-12-48
9 " " 48

Justices of Derbyshire, 2 *Ld. Kenyon*, 209; *R. v. Fowler*, 1 *A. & E.* 836; 1. *What it is, and use of.*
R. v. Justices of Yorkshire, 5 *T. R.* 629; *R. v. Justices of Somersetshire*, 5 *B. & C.* 816; *Ex parte Henn*, 6 *Ir. C. L. R.* 243.) But a distinction has been taken between where the order is clearly in excess of jurisdiction, and where there is a doubt on the matter. (*Reg. v. Hyde*, 21 *L. J. M. C.* 94.) But where by a clause in a statute it is provided that no summary conviction under it shall be removed by *certiorari*, and upon the face of a conviction it may be that the justices have no jurisdiction, or that having jurisdiction they have omitted to set it forth, the defendant cannot obtain a *certiorari* to remove such conviction, unless he showed by affidavit that there was no jurisdiction; (*R. v. Long*, 1 *M. & R.* 139;) and though an order or conviction show jurisdiction on the face of it, the court will receive affidavits to show whether in fact there was jurisdiction or not and grant or refuse a *certiorari* thereupon. (*Reg. v. Bolton*, 1 *Q. B.* 66.)

But if upon a *certiorari* to remove an order of sessions relating to an order of removal, the clerk of the peace returned the original order, the order of sessions, and a statement of facts, from which it appeared that the notice of the grounds of appeal was insufficient under the 4 & 5 Will. IV. c. 76, s. 81, it was held that as the order of sessions was good on the face of it, and the sessions had not stated any case for the opinion of the court, the statement of the clerk of the peace could not be noticed. (*Reg. v. Inhabitants of Abergyle*, 5 *A. & E.* 795.)

Where order of sessions good on the face of it, and no case stated.

A verdict and judgment of a sheriff's jury recorded under the 50th section of the 8 & 9 Vict. c. 18, by which compensation has been assessed under the 68th section of that Act will be removed by *certiorari* for excess of jurisdiction, if it has been assessed, in respect of matters which are not the subject of compensation, notwithstanding the *certiorari* is taken away by the statute; (*Re Penny*, 7 *E. & B.* 660; 26 *L. J. Q. B.* 225;) and such excess of jurisdiction may be shown by affidavit; (*ibid.*;) but a *certiorari* will not be granted to bring up the inquisition of a compensation jury, unless defects in the inquisition be positively sworn to. Thus, where a statute directed that a railway company should not take lands unless set out in a schedule to the Act or certified by justices to have been omitted by mistake, it was held not sufficient to show that the lands, which were the subject of the inquisition, were not in the schedule without negating the fact of the certificate. (*Reg. v. Manchester and Leeds Railway Company*, 8 *A. & E.* 413.)

Inquisitions of sheriff's jury.

Where a proceeding operates upon something not within the Act, parties cannot put themselves out of the reach of the court by inserting something in their proceedings, which is within the jurisdiction conferred by the Act, so that a *certiorari* will lie in such a case, although it is taken away with respect to any proceeding in pursuance of the Act. (*Reg. v. Hull Dock Company*, 3 *Rail. Cas.* 795; *South Wales Railway Company v. Richards*, 6 *Rail. Cas.* 197; 18 *L. J. Q. B.* 310.)

And where the *certiorari* is taken away in respect of any proceeding taken in pursuance of an Act of Parliament, if the proceedings are properly originated, any irregularity or informality or interlocutory proceedings will not render the whole proceeding liable to be reviewed; (*R. v. Casson*, 3 *D. & R.* 36; *Reg. v. Sheffield, Ashton-under-Lyne, and Manchester Railway Company*, 11 *A. & E.* 194;) but, on the other hand, where the proceeding pretended to be taken under the Act was had locally or visibly without jurisdiction, it will be treated as a nullity and as the act of a stranger, and in that case also no *certiorari* will be granted. (*Reg. v. Bristol and Exeter Railway Company*, 11 *A. & E.* 202; *Reg. v. Lancaster and Preston Junction*, 6 *Q. B.* 759; 14 *L. J. Q. B.* 84.)

And where an indictment was framed for an offence created by a statute taking away the *certiorari*, and contained also counts for another offence, as to which it was not taken away, the writ was held

1. *What it is, and use of.* issuable. (*R. v. Saunders*, 5 D. & R. 611; and see *R. v. Fowler*, 1 A. & E. 836.)

Indictments.

Although a statute prohibits the removal of an indictment by *certiorari* into any superior court, if a subsequent statute gives permission for its removal into a court of peculiar jurisdiction where no such prohibition exists, the restriction on the *certiorari* is gone altogether as against the Queen's Bench. (*Reg. v. Brier*, 14 Q. B. 568; 19 L. J. M. C. 121; but see *R. v. Mark Terrel*, 2 T. R. 735.)

Central Criminal Court.

The Central Criminal Court Act rather authorizes the making of an order in the nature of a *certiorari* than the issuing of a *certiorari*, for the latter writ would remove the indictment into the Queen's Bench at once. (*Reg. v. Sill*, 1 Dears. C. C. 10; 21 L. J. M. C. 214.)

Where order made by court composed of interested justices.

And if the *certiorari* is taken away with respect to any order or rate allowed or confirmed on appeal, but the court of quarter sessions, which decided on the appeal, was in part composed of persons having an interest in the matter, it was held that the clause prohibiting a *certiorari* did not apply, as the court was improperly constituted, and the order of quarter sessions was quashed, although it did not appear that there had been any undue partiality shown. But if a party to the appeal, knowing of the interest, expressly or impliedly assent to the interested magistrate acting, such party cannot afterwards make the objection. (*Reg. v. Cheltenham Commissioners of, &c.*, 1 Q. B. 467; 10 L. J. M. C. 99.)

A *certiorari* will go to remove or quash an order confirming a conviction on appeal, in which interested justices have taken part preparatory to an application for a *mandamus* to the court to enter continuances and hear the appeal. (*Re Hopkins*, E. B. & E. 100; 4 Jur. N. S. 529.) In that case the justices at sessions confirmed a conviction for travelling in a second class carriage with a third class ticket contrary to the bye-laws of a railway company, some of the justices so acting being shareholders in the company, and the information being preferred on behalf of the company by their superintendent of police; (*ibid.*;) and the court quashed a conviction made under the "Salmon Fishery Act, 1861," where the convicting justices were active members of an association for the preservation of salmon. (*Reg. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 98, post, 628, 631.)

Nor where it is taken away to give defendant an option of appealing.

And where by the words of a statute the *certiorari* is taken away, but by its general tenor that is only done to give the option of appeal to the sessions, the right of proceeding by *certiorari* is only barred by the party adopting the method of appeal. On a motion to remove by *certiorari* a conviction by a justice on stat. 16 Geo. III. c. 30, (now repealed by 7 & 8 Geo. IV. c. 27,) to prevent the stealing of deer, it was objected that no *certiorari* lay; for by the 23rd section it is enacted, that no conviction or judgment should be removed by *certiorari*. But the court were of opinion that the result of the several provisions in the Act was, that the defendant had an option either to remove the proceedings from before the convicting justice by *certiorari*, or to appeal to the sessions; that if he had adopted the latter mode, the *certiorari* would have been barred, but not in the former case. (*R. v. Eaton*, 2 T. R. 89.)

Taken away by inference.

Where a statute imposed penalties to be recovered on summary conviction, and took away the right of *certiorari*, and a later statute on the same subject imposed additional penalties on other persons, and contained a clause by which it was provided that all the powers, provisions, exemptions, penalties, forfeitures, payments, remedies, matters and things contained in the former Act should be as effectual for carrying the same into execution as if re-enacted; it was held, on a conviction on the latter statute, that the clause in the former statute taking away *certiorari* was extended by inference to the new statute. (*R. v. Fell*, 1 B. & Ad. 380.) A river navigation Act provided that no proceeding to be taken in pursuance thereof should be removed by *certiorari*: by a

subsequent statute for improving the same navigation, it was enacted that all the powers, provisions, exemptions, rules, remedies, regulations, penalties, forfeitures, articles, matters and things whatsoever contained in the former Act should be in full force, and extend to and be applied and enforced as to that Act and the matters therein contained, in as full a manner to all intents and purposes as if therein re-enacted; it was held, that these were sufficient words to take away the *certiorari* on proceedings under the latter Act. (*R. v. Justices of Yorkshire, W. R. 1 A. & E. 563.*)

And where a statute provided "That no order made touching or concerning any of the matters in this Act contained, or any proceeding to be had, touching the conviction of any offender against this Act, shall be removable by *certiorari*," and an appeal was given to the quarter sessions, but nothing was said about the *certiorari* with respect to the judgment of quarter sessions, but without the conviction the order of quarter sessions could not be removed, those words were held to prohibit a *certiorari* to the quarter sessions. (*Reg. v. Cook, 1 Dowl. N. S. 300; 5 Jur. 1181.*)

And where the clause taking away the *certiorari* is placed after clauses relating to summary convictions and before the clause giving an appeal from such convictions, the collocation of the clauses does not prevent the *certiorari* clause applying to the appeal clause. (*Reg. v. Justices of Lindsey, 2 N. S. C. 56.*)

The Court of Queen's Bench is in the habit of granting a *certiorari* to bring up depositions before them, in order to have prisoners bailed on their own application, but not in order to assist a prosecutor to get a committal. (*Reg. v. Dean, 2 Q. B. 732; per Lord Denman.*)

But on applying for the writ of *certiorari* to remove depositions with a view to admit to bail a party committed upon them on trial, the uniform practice is to produce copies of the depositions, verified by affidavit, and on them to found the application. (*Reg. v. Barthelmy, 1 Dears. C. C. 60; 17 Jur. 184.*)

2. What Proceedings removable by, &c.

To remove depositions.

II. What Proceedings removable by, and on what Grounds granted.

In general.—A *certiorari*, does not lie to remove other than judicial acts, *ante*, 617. Therefore it does not lie to remove a mere order of court or warrant issued by a magistrate; (*R. v. Lloyd, Cald. 309; R. v. Lediard, Say. 6*;) nor a poor rate; (*R. v. Inhabs. of Uttoxeter, 2 Stra. 932, 975; R. v. King, 2 T. R. 235; R. v. Wavell, 1 Dougl. 116*; see *Reg. v. Justices of Middlesex, 9 A. & E. 541*;) nor an assessment of the land-tax; (*R. v. King, 2 T. R. 234*;) nor a warrant of distress to levy a poor rate; (*Ex parte Taunton, 1 Dowl. P. C. 54*;) nor an appointment of a surveyor under the Highway Act, (13 Geo. III. c. 78,) when that Act was in force; (*R. v. Justices of St. Albans, 5 D. & R. 538; 3 B. & C. 698*;) nor such an instrument as a resolution of a vestry; (*In re Constables of Hipperholme, 5 Dowl. & L. 79*;) but the appointment of paid constables by justices in special sessions under 5 & 6 Vict. c. 109, may be brought up; (*ibid.*;) nor as a certificate by a clergyman and overseer, pursuant to the 8 & 9 Vict. c. 100, s. 48, for the reception of a pauper lunatic into a licensed house for the reception of lunatics; (*Reg. v. The Inhabitants of Hatfield Peverel, 14 Q. B. 298; 18 L. J. M. C. 225*;) nor a license for the sale of beer granted by a collector or supervisor of excise under the Board of Inland Revenue. (*Reg. v. Overseers of Salford, 18 Q. B. 687; 21 L. J. M. C. 223.*)

In general.

A provisional order of a secretary of state under the 11 & 12 Vict. c. 3 and 21 & 22 Vict. c. 98, empowering a local board to put in force the

2. *What Proceedings removable by, &c.*

Lands Clauses Consolidation Act, with respect to the purchases of land, is not a judicial order, and has no validity until it has been confirmed by Act of Parliament, and is therefore not removable by *certiorari*. (*Frewen v. Local Board of Health of Hastings*, 34 L. J. Q. B. 159.)

And orders of the Poor Law Commissioners are removable into the Court of Queen's Bench only by the 105th section of 4 & 5 Will. IV. c. 76; but an appointment of overseers prior to the New Poor Law Act could be removed by *certiorari*. (*R. v. Warwick*, 2 Stra. 991; see *R. v. Justices of Somersetshire*, 1 D. & R. 443.)

Orders of quarter sessions.

Articles of the peace may be brought up from quarter sessions, and the order to find sureties therewith, and the court will examine into the sufficiency of the articles to warrant the order. (*Re Dunn*, 4 P. & D. 415; 5 Jur. 721.)

Formerly recognizances entered into at quarter sessions to keep the peace must have been brought up by *certiorari*, in order to be estreated; (*In re White*, 1 N. S. C. 9; see *R. v. Justices of Yorkshire, W. R.*, 7 A. & E. 583;) but the court has refused to remove a recognizance before justices of *oyer and terminer*, &c., because the court below is most proper to judge upon the whole circumstances of the case, which are equitably to be considered whether it ought to be estreated or not; (2 Hawk. c. 27, s. 33; *Lofft*, 321;) but now by the 16 & 17 Vict. c. 30, s. 2, the court of quarter sessions is made the tribunal to declare such recognizances forfeited.

A presentment by a court of sewers is removable; (*Reg. v. Baker*, 28 L. J. Q. B. 377;) or at a court leet for a nuisance; (*Cowp.* 458;) and so also is an information at a quarter sessions for exercising a trade without having served an apprenticeship. (*Cowp.* 369.)

An order of quarter sessions that no officer of the court should take any fee from defendants in misdemeanour is a judicial order; (*Reg. v. Coles*, 8 Q. B. 75; 15 L. J. M. C. 10;) or an order of quarter sessions allowing or disallowing items in the county treasurer's accounts. (See *R. v. Saunders*, 3 E. & B. 763; 24 L. J. M. C. 45.)

Orders of quarter sessions.

A *certiorari* will lie to bring up a record of an acquittal from quarter sessions as well as other proceedings before justices; (*Jackson v. Oaks*, 11 Jur. 1105;) or an order that barristers shall have pre-audience in court. (*Reg. v. Denbighshire*, 2 N. S. C. 422.)

The *certiorari* can only require the return of the record of quarter sessions in removal cases, that is to say, the original order of removal and the proceedings of the sessions thereon upon the hearing, and therefore the examination whereon the original order of removal was made cannot be required. (*Reg. v. Justices of West Riding*, 12 L. J. M. C. 15; *Reg. v. Inhabitants of Rotherham*, *id.* 17; *Reg. v. Justices of Bucks*, 3 Q. B. 800.) And it will go to bring up an order of removal for defects apparent on the face of it, although a right of appeal to the quarter sessions was given to the party applying which had not been exercised. (*Reg. v. Beathwayt*, 2 N. S. 240; 15 L. J. M. C. 48; *R. v. Wooltats*, 2 N. S. C. 5; 7 Q. B. 516; 14 L. J. M. C. 157.)

A consent and approbation of commissioners to the making of a bridge under 33 Geo. III. c. 95, for making the Aberdare Canal given after holding a meeting, and having evidence and argument *pro* and *con*. between the proprietors of the canal and the owners of property is a judicial act. (*Reg. v. Aberdare Canal Company*, 14 Q. B. 854; 19 L. J. Q. B. 251.)

Railway Inquisitions.

Inquisitions for assessing compensations to the owners of lands under the Lands Clauses Consolidation Act, and the judgment thereupon, may be removed by *certiorari*. (*Reg. v. Manchester and Leeds Railway Company*, 1 P. & D. 164; see *ante*, 619.)

When an Act of Parliament for making a railway directed that inquisitions for assessing compensation to the owners of lands required by the company should be taken before the sheriff of the county, and that such inquisitions and judgments thereupon should be kept by the

clerk of the peace among the records of the county, and be deemed records to all intents, &c. : it was held, first, that a *certiorari* lies even after judgment to remove such an inquisition ; secondly, that the rule to show cause why the writ should not issue was properly directed to the clerk of the company, although the inquisition was out of their custody. (*Ibid.*)

No *certiorari* lies to bring up the judgment by a court martial of dismissal of the service, by which the military status alone of the individual, and not his civil rights, is affected. (*In re Mansergh*, 1 B. & S. 400 ; 30 L. J. Q. B. 296.)

It is very doubtful whether a *certiorari* lies to control the proceeding of courts beyond the seas, as in the colonies or India, (*Reg. v. Mansergh*, 1 B. & S. 400 ; 30 L. J. Q. B. 296,) though it will control the dependencies of England, such as Berwick or the Isle of Man. (*Id.*)

And generally when the *certiorari* is taken away, the court will not directly or indirectly in any manner enable a defendant to bring the proceedings below before it. (*R. v. Eaton*, 2 T. R. 285 ; *R. v. Justices of Yorkshire*, 1 A. & E. 563.) Nor will they interfere so as to review the proceedings by *mandamus*. (*Ibid.* ; *R. v. Yorkshire*, 5 B. & Ad. 1003 ; 3 N. & M. 93.)

The writ lies to remove indictments from the sessions, and other inferior criminal jurisdictions, before verdict.

At the instance of the crown the writ is demandable of *absolute right*, and the court is bound to grant it. (4 Burr. 2458 ; *R. v. Eaton*, 2 T. R. 89 ; *ante*, 620 ; 1 East, 303, n. d.) And, therefore, when it is applied for by the attorney-general, or other officer of the crown, either as a prosecutor, or when he takes up the defence of the party indicted, on account of his being an officer of the crown, or for some other reason, it must issue as a matter of course, and the court or judge has no discretion to exercise ; (*Id. ibid.* ; 4 Burr. 2458 ; 1 East, 303, n. d. ; *R. v. Thomas*, Mich. Term, 1815 ;) and even where a statute takes away the *certiorari*, it does not, as we have already seen, extend to the crown, unless expressly mentioned, *ante*, 618.

And upon the ground that every indictment is at the suit of the Queen, the writ was before the 4 & 5 Will. IV. c. 33, usually awarded as a matter of course to *private prosecutors*, and this even from the Old Bailey, though it was even before that Act, as it still is now, in the power of the judges to refuse it or to award a *procedendo*, if cause be shown why it ought not to have been issued. (*Reg. v. Scaife*, 18 Q. B. 773 ; 21 L. J. M. C. 221 ; *Reg. v. Rushworth*, 1 N. S. C. 415 ; *R. v. Lewis*, 4 Burr. 2458 ; *R. v. Gwynne*, 2 Burr. 752.) But by the 5 & 6 Will. IV. c. 33, for preventing the vexatious removal of indictments into the Court of Queen's Bench, s. 1, it is enacted, "that no writ of *certiorari* shall issue from the Court of King's Bench at Westminster for removing into that court any indictment or presentment from any court of session, assize, *oyer* and *terminer*, or gaol delivery, or any other court, at the instance of the prosecutor or any other person, (except his Majesty's attorney-general,) without motion made first in the Court of King's Bench, or before some judge of that court, and leave obtained to remove such indictment or presentment, in the same manner as similar motions may now be made and leave given where such application is made on the part of defendants ; any law, practice or use to the contrary in anywise notwithstanding."

And by the 16 & 17 Vict. c. 30, s. 4, it is further enacted that no indictment (except indictments against bodies corporate not authorized to appear by attorney in the court in which the indictment is preferred) shall be removed into the Court of Queen's Bench, or into the Central Criminal Court by writ of *certiorari*, either at the instance of the prosecutor or of the defendant, (other than the attorney-general acting on behalf of the crown,) unless it be made to appear to the court from which the writ is to issue by the party applying for the same, that a

2. *What Proceedings removable by, &c.*

As to courts martial.

Colonial courts.

Indictments and presentments.

At the instance of the crown.

At the prosecutor's instance.

5 & 6 W. IV. c. 33.

Grounds upon which writ may issue under 16 & 17 Vict. c. 30, s. 4.

2. *What Proceedings removable by, &c.*

On ground of partiality, &c.

fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury may be required for the satisfactory trial of the same. It is, however still left to the discretion of the court or judge either to grant or deny it at the defendant's instance, so long as before granting it one of the grounds required by the statute is made out.

In *Reg. v. Palmer*, (5 E. & B. 1024,) the court granted a writ to remove the coroner's inquisition, and any indictment which might be found at the ensuing county assizes in the case of a prisoner charged with murder in the county, on account of the prejudice that existed in the county against him. And the court treated it as no answer that the prosecution would be put to very great expense by the removal of the indictment, or that the recognizances of the witnesses who had been bound over to the assizes (under the 11 & 12 Vict. c. 42, s. 20) would be discharged thereby.

But where there is only a possibility of prejudice arising from a publication which had appeared some months before the trial, and the prisoners had delayed the application, while on the other hand there would be great delay in the administration of justice, and the increase in expense would be so great as to lead to the probable abandonment of the prosecution, the court refused, after a previous postponement of the trial, to remove an indictment for murder from Yorkshire assizes. (*R. v. Mead*, 3 D. & R. 301.)

The mere circumstance of a defendant in an indictment for an assault found at quarter sessions, being a magistrate of the county, is not sufficient ground for presuming that the bench would not fairly try the case, which was a question purely of fact, (*R. v. Fellowes and Others*, 4 Dowl. 607,) but it might be otherwise when he had been circulating among the magistrates of the county a printed statement of the charges against him. (*Reg. v. Grover*, 8 Dowl. 325.) Nor is it a ground for the writ to remove an indictment, found at quarter sessions, for an assault on a girl, that the chairman of the quarter sessions was very intimate with the father of the prosecutrix, that they both held farms under the same landlord, and that the prosecution had been the subject of much discussion in the neighbourhood. (*Reg. v. Renshaw*, 5 Jur. 801.)

To procure the defendant a fair trial, and give him the advantage of a special jury, and the assistance of a counsel of eminence, an indictment for a conspiracy to defraud the revenue at the suit of the crown, which will be prosecuted by the law officers of the crown, will be removed from the Central Criminal Court into the Court of Queen's Bench. (*Reg. v. Jeffs*, 9 Jur. 580.)

Perhaps malicious motives for the prosecution may be a sufficient reason for the removal of indictment from a private or inferior jurisdiction, where the prosecutor might have great influence, (*R. v. Chipping Norton*, 1 Barnard 7,) but the same reasons cannot apply with reference to an indictment at the Central Criminal Court. (*Reg. v. Jeffs*, 9 Jur. 580.)

That the offence was long past and the charges stale, would seem not to be good grounds to rely on. (*Id.*)

After an indictment has been removed from the assizes the court has power to change the place of trial, but refused to remove an indictment for an unnatural offence from the assizes for the county of Suffolk into the county of Kent, though it was suggested that it might have made a difference if the jurisdiction had been more limited. (*R. v. Holden*, 5 B. & Ad. 347; see *R. v. Penprase*, 4 B. & Ad. 575.)

But the writ was granted to remove a coroner's inquisition, by which a verdict of manslaughter of three persons was found against the inspector and a body of police, who had fired and killed the men during an election in the city of Limerick, from the county of the city of Limerick

into the county of Limerick, on the grounds that it was a very serious charge, and a case occurring within a very limited jurisdiction, and arising out of circumstances of a very exciting nature. (*Reg. v. Bell*, 8 *Cox C. C.* 287.) So it is a sufficient ground for the removal of an indictment for a libel from a borough sessions where the number of jurors in the borough was small, and the defendant was intimate with many of them. (*Reg. v. Oulsley*, 6 *Jur.* 62; *Garbett v. Oulsley*, *id.* 193; see also *Reban v. Trevor*, 4 *Jur.* 292.)

The court removed an indictment by *certiorari* at the instance of the defendant, from the Central Criminal Court, on the suggestion that it involved points of law arising out of proceedings in Chancery relative to matters of account; (*R. v. Wartnaby*, 2 *A. & E.* 435;) but refused the writ to remove an indictment from the assizes on the ground that the result must depend upon the accurate solution of a long series of accounts. (*Reg. v. Morton*, 1 *Dowl. N. S.* 543.)

And they are in general reluctant to grant these applications without the assent of the prosecutor, when they are made to remove proceedings from a jurisdiction of superior eminence, as before justices of assize or gaol delivery, or from the Central Criminal Court, or from the Old Bailey, or from the Middlesex sessions, or any other court where any of the judges preside. (*R. v. Morton*, 1 *Dowl. N. S.* 543; *R. v. Wartnaby*, 2 *A. & E.* 436 n.; *R. v. Duchess of Kingston*, *Cowp.* 283; *Anon.* 1 *Salk.* 144; 1 *Sess. Ca.* 314; *Burr.* 877, 1202; 1 *Ken. Rep.* 135; 1 *Chit. C. L.* 379.)

To obtain the writ on the ground that a difficult or important question of law is likely to arise on the trial, the affidavits must show the specific grounds upon which the legal difficulties will arise. (*R. v. Joule*, 5 *A. & E.* 532; *R. v. Hodges*, 9 *Jur.* 665; *R. v. Morton*, 1 *Dowl. N. S.* 543; *Clark v. Willington*, 7 *Jur.* 44; *R. v. Josephs*, 8 *Dowl.* 128; *R. v. Harrison*, 1 *Chit.* 571; see *post*, 634.)

If the prosecution appear to rest on slight foundation, or it be doubtful whether in point of law it be sustainable, and the defendant's general character be good; (*R. v. Wells*, 1 *Str.* 549; *Nehuff's case*, 1 *Salk.* 151; *Bac. Abr. Certiorari* [A];) or if the prosecution seem to originate in malice; (1 *Barnard*, 7; *Bac. Abr. Certiorari* [A];) or where there has been vexatious delay, and by reason of the absence of the judges a trial has not been obtained; (*R. v. Morgan*, 2 *Str.* 1049; *R. v. Ferguson*, *Rep. temp. Hardw.* 370;) the writ will in general be allowed. So it will be allowed if the prosecutor put the defendant to unnecessary delay and expense, and harass him by continuing proceedings, without bringing the matter to trial. (2 *Str.* 1049; *Com. Dig. Certiorari* [D].)

On an indictment for a nuisance, where it is necessary to the defendant to have a view of the premises, a *certiorari* will be granted for the purpose, upon affidavit that he cannot otherwise obtain it. (1 *Barnard*, 214; 1 *Sess. Cas.* 180. See now 16 & 17 *Vict. c.* 30, s. 4, *ante*, 623.)

Where the defendant was a public officer, (a deputy registrar,) and his personal attendance was daily necessary, the court granted a *certiorari* to remove an indictment from the Old Bailey to Gloucester, where the defendant resided. (1 *Chit. Rep.* 571, n.)

The writ will not, it seems, in any case be granted for the changing the place of trial, where the indictment arises in a town which is a county of itself, for in such instances a particular course of proceeding is directed by the 38 *Geo. III. c.* 52, in order to have a trial by a jury of the county at large. (*R. v. Holden*, 2 *N. & M.* 167; 5 *B. & Ad.* 352, 353; but see *R. v. Bell*, 8 *Cox C. C.* 287, *supra*.)

An indictment found at quarter sessions can only be removed from that court by *certiorari*, and a judge of assize has no power to order its removal, but the justices of the county may remit it for the purpose of being tried. (*Turner's case*, 2 *Lew. C. C.* 265; *R. v. Wetherell*, *R. & R.* 381.)

2. What Proceedings removable by, &c.

Smallness of number of jurors.

Difficulty of the case from the nature of the facts.

Difficulty in point of law.

For a view.

2. *What Proceedings removable by, &c.*

As to indictments for false pretences,

The court will issue a *certiorari* after the sessions have quashed an indictment, to bring up the indictment and the order, in order to see whether the order was a valid order or not. (*Reg. v. Wilson*, 1 N. S. C. 190; 8 Jur. 1069.)

The prohibition against the removal of indictments for false pretences by *certiorari*, laid by the 7 & 8 Geo. IV. c. 29, s. 53, is no longer in force, as the 25 & 26 Vict. c. 96, s. 88, omits such a provision; but see 16 Vict. c. 30, s. 4.

Where there are several defendants, it was considered in one case, under very peculiar circumstances, that all should concur in the application on their or one of their behalves. (*R. v. Hunt*, 3 B. & A. 444.) But this must not be considered as a general rule. (See *post*, 636).

Convictions, &c., orders, &c.—Convictions and orders of justices at or out of sessions, and other summary judicial proceedings, may be removed into the Court of Queen's Bench by the writ of *certiorari*, in order that the same may be quashed for any defect apparent on the face of them. But if the proceedings are all regular on the face of them, or disclose a case within the jurisdiction of the magistrates where the legislature has entrusted the final jurisdiction on the merits to them, their decision cannot be impeached. The principle upon which this proposition turns is very simple; the difficulty is always found in applying it. But in the *Queen v. Bolton*, (1 Q. B. 66,) it was contended that though the conviction of the magistrate in that case was regular on the face of it, it was open to the court to inquire, on a return to a *certiorari* of the proceedings, whether the case was within the jurisdiction of the justices, for that the magistrates could not give themselves jurisdiction by their own affirmation of it. And the court, in a considered judgment there says, "Where the charge laid before the magistrate, as stated in the information, does not amount in law to the offence over which the statute gives him jurisdiction, his finding the party guilty by his conviction in the very terms of the statute would not avail to give him jurisdiction: the conviction would be bad on the face of the proceedings, all being returned before us. Or if, the charge being really insufficient, he had mis-stated it in drawing up the proceedings, so that they would appear to be regular, it would be clearly competent to the defendant to shew to us by affidavits what the real charge was, and that appearing to have been insufficient, we should quash the conviction. . . . But, where a charge has been well laid before a magistrate on its face, bringing itself within his jurisdiction, he is bound to commence the inquiry: in so doing he undoubtedly acts within his jurisdiction; but in the course of the inquiry evidence being offered for and against the charge, the proper, or it may be the irresistible conclusion to be drawn, may be that the offence has not been committed, and so that the case in one sense was not within the jurisdiction. . . . Upon principle, affidavits cannot be received under such circumstances. The question of jurisdiction does not depend on the truth or falsehood of the charge, but upon its nature; it is determinable on the commencement, not at the conclusion of the inquiry, and affidavits to be receivable must be directed to what appears at the former stage, and not to the facts disclosed in the progress of the inquiry." In that case the proceedings, had before two magistrates under the stat. 59 Geo. III, c. 12, ss. 24 & 25, upon which they made an order for delivering up a parish house to the parish officers, were returned to a *certiorari*; and the court, with reference to the inquiry before them, said that it must be limited to "whether the magistrates had jurisdiction to inquire and determine, supposing the facts alleged in the information to be true." In that case it had not been contended that there was any irregularity on the face of their proceedings. And the court further said, "The information and the recital of it in the magistrate's return both state that the defendant, having been permitted to

occupy a parish house belonging to the hamlet, had neglected to quit the same, or deliver up possession thereof to the churchwardens, &c., within one month after notice and demand in writing, signed by, &c., that he had been served with summons to appear, and more than seven days after had appeared to answer the complaint. These are all the circumstances required by the statute to found the jurisdiction upon: these it was the duty of the magistrate to proceed to inquire; and no affidavit disputes the truth of the return that such an information was laid before the magistrates, and such summons issued, and that such appearance took place. The return then goes on to state the substance of the evidence adduced in support of the complaint, that the defendant was heard in answer, and that the magistrates found the complaint proved. No affidavit denies that such evidence was offered, that the defendant was heard in his defence, or that such judgment was pronounced. Beyond this we cannot go." The rule laid down in *Cave v. Mountain*, (1 M. & G. 257,) on the question of the magistrate's jurisdiction, was approved of in the above case. If the conviction or order be a nullity, a *certiorari* would not be granted, in order that it might be quashed, if the party have some other convenient remedy, as, for instance, by action; (*Reg. v. Bristol and Exeter Railway Company*, 11 A. & E. 202; *Reg. v. Lancaster and Preston Junction Railway*, 6 Q. B. 759; 3 Sess. Cas. 735; *Reg. v. Sheffield, Ashton-under-Lyne, and Manchester Railway Company*, 11 A. & E. 194;) but although the conviction or order be a nullity, a *certiorari* may be ordered to remove it in order to quash it if its existence be a grievance to the party convicted. (*Reg. v. Yorkshire Justices*, 7 A. & E. 533; *Re Hopkins*, E. B. & E. 100; *Reg. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 98.) And if the justices who convicted were interested, the conviction will be quashed. (*Reg. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 98.) In that case, the justices who took part in a conviction under the Salmon Fishery Act, 1861, were members of an association for the protection of salmon in a river, and the conviction was on an information instituted by the association; and by 11 & 12 Vict. c. 44, no action for an act done by a justice of the peace in a matter of which, by law, he has not jurisdiction, or in which he shall have exceeded his jurisdiction, can be brought for any thing done under any conviction or order made in such matter, until after such conviction or order shall have been quashed, either upon appeal or upon application to the Court of Queen's Bench.

The court or a judge has, in all cases between private persons, a discretionary power to grant the writ or not; (*R. v. Glace*, 4 Burr. 2858; *R. v. Bass*, 5 T. R. 252; see *R. v. Manchester and Leeds Railway Company*, 8 A. & E. 413;) so that even if an Act provides specially that a judgment or determination of an inferior tribunal may be removed by *certiorari*, it is, nevertheless, discretionary with the court whether they will grant the writ. (*Reg. v. Mason*, 6 Jur. 1061; but see *Ex parte Kelsey*, 19 L. J. Q. B. 145.) It will not in general be granted, unless it be shown that some injustice has been or will be done in the inferior jurisdiction. (*R. v. Bass*, 5 T. R. 252.) So that before a *certiorari* will be granted to bring up an order of bastardy, for the purpose of quashing it, on the ground that it was made in the absence of the defendant, and without service of summons at his last place of abode, the defendant must show, on affidavit, that he is not the father of the child. (*Reg. v. Davis*, 22 L. J. M. C. 143.) In general, a mere informality in a conviction or order having no reference to the merits of the case, ought not of itself to be the inducement for removing it, but that inducement ought to be of some substantial defect in the justice and legality of the proceeding itself. (*R. v. Casson*, 3 D. & R. 136; see *R. v. Justices of Denbighshire*, 1 B. & Ad. 616; *Reg. v. Sheffield, Ashton-under-Lyne, and Manchester Railway Company*, 11 A. & E. 194.)

2. *What Proceedings removable by, &c.*

Nullity.

Discretion of the court.

Affidavit of merits necessary.

2. *What Proceedings removable by, &c.*

Conviction obtained by fraud.

Application to be by party complaining.

Enforcing order under 12 & 13 Vict. c. 45, s. 18.

As to appeal from judge at chambers.

The conduct of the party applying for the writ may be frequently taken into consideration. (*R. v. South Holland Drainage Committee*, 8 A. & E. 429; *Reg. v. Commissioners of Sewers of Tower Hamlets*, 5 Q. B. 357; *post*, 630.)

But the court will issue a *certiorari* to bring up a conviction which has been obtained before justices in due form, upon affidavits which showed that the proceedings to obtain it were taken collusively and fraudulently, and that it was the result of conspiracy and subornation of perjury. (*Reg. v. Gillyard*, 12 Q. B. 527; 17 L. J. M. C. 153.)

The application for *certiorari* cannot, as in the case of a *habeas corpus*, be made by a person other than the party complaining. (*Reg. v. Riall*, 11 Ir. C. L. 279, 291.) A *certiorari* was granted, on the application of the commissioners of excise, to remove a conviction which had been obtained, according to the affidavits, collusively by a maltster against his servant, in order to protect himself against proceedings against him. (*Reg. v. Gillyard*, 12 Q. B. 527; 17 L. J. M. C. 153.)

Where an order of sessions involves the liberty of the subject, the proper mode of obtaining relief is not by applying for a *certiorari* to remove the order, but for a *habeas corpus*, on a return to which the cause of commitment would be specified, and upon that the court would be enabled to form an opinion whether or not those causes were sufficient to justify his detention. (*Reg. v. Riall*, 11 Ir. C. L. 279, 290; *R. v. Bowen*, 5 T. R. 156, 158.)

No *certiorari* is necessary to remove an order into the Court of Queen's Bench from the Court of Quarter Sessions, under the 12 & 13 Vict. c. 45, s. 18, for the purpose of enforcing it. (*Hawker v. Field*, 1 L. M. & P. 606; 20 L. J. M. C. 41.)

Though the *certiorari* is taken away by an Act under which an order of sessions on appeal is made, yet if the order is brought into the Court of Queen's Bench for the purpose of being enforced under the 12 & 13 Vict. c. 45, the person against whom the order is sought to be enforced may object to the order, (but not go farther back,) and the court can set aside the *fi. fa.* and all proceedings on the order. (*Reg. v. Hellier*, 17 Q. B. 229; 20 L. J. M. C. 3.) In that case, on appeal against a conviction under the "Alehouse Licensing Act," (9 Geo. IV. c. 61,) the sessions affirmed the conviction and ordered the appellant to pay forthwith to the respondent justices the sum, &c., for costs, and in case of default, to be committed to the house of correction until such sum should be paid; and on the order being brought up to be enforced, it was held a bad order, since the 11 & 12 Vict. c. 43, s. 27, requires that such order should make the costs to be paid to the clerk of the peace, to be by him paid over to the party entitled, and shall state within what time payment shall be, and that on non-payment, and in default of distress, the party may be committed for any time not exceeding three months, unless the costs, &c., be sooner paid. And the party was held not to be too late in objecting, although more than six months had elapsed from the making of the order, as he had lost no time after the order was removed. (*Reg. v. Hellier*, *ubi sup.*)

As no *certiorari* issues out of the Court of Exchequer, a conviction is properly brought before it if verified by affidavit. (*In re Allison*, 10 Exch. 561.)

The court will not interfere with the discretion a judge has exercised in granting or refusing a *certiorari* in a case where he had jurisdiction so to act, if all the facts were fairly laid before him on the application for the writ. (*Reg. v. Wilkes*, 5 E. & B. 690; 25 L. J. Q. B. 47; 1 Jur. N. S. 1166.)

3. Time of applying for.

III. Within what time the Writ must be applied for.

Indictments, &c.—A *certiorari* may remove a record that shall come within its description, before the time of its return, though there were no such record *in esse* at the time of its *teste*, nor at the time when it was first delivered to the court below. (2 *Hawk. P. C. c. 27, s. 23.*) Thus, in *Reg. v. Palmer*, (5 *E. & B.* 1024,) a *certiorari* went to remove not only the coroner's inquisition in a case of murder, but also all indictments that might be found at the ensuing assizes against the prisoner. And it seems that a *certiorari* may also remove an indictment which is discontinued below. (2 *Hawk. P. C. c. 27, s. 74.*)

Indictments, &c.

In all cases the application should be made time enough for the trial to take place at the next holding of the court in which it is the object to have it heard. (*R. v. Perkins*, 1 *Chit. C. L.* 2d edit., 381.)

By stat. 60 Geo. III. c. 4, ss. 3, 4, 5, in cases of misdemeanour the *certiorari* must be delivered before the jury are sworn; but by sect. 4, it may be applied for and issued before the indictment has been found, in the like cases, in the same manner, and upon the same terms and conditions as if such writ of *certiorari* had been applied for after such indictment had been found.

In misdemeanours must be before jury sworn.

In prosecutions by indictments and informations in the Crown Office, the application for the writ should regularly be made before issue joined. (2 *Hawk. c. 27, s. 10, 30*; *R. v. Roupel*, *Cowp.* 369, 458; *R. v. Hube*, 5 *T. R.* 542.)

In prosecutions in Crown Office, before issue joined.

The writ will never be granted to remove an indictment after conviction unless for some special cause; as where the judge below is doubtful what judgment to give. (2 *Hawk. c. 27, s. 31.*)

Not after conviction.

In *R. v. Oxfordshire*, (13 *East*, 411,) the defendants were indicted at the assizes and found guilty of the non-repair of a public bridge, and afterwards a motion was made in the Court of Queen's Bench for a *certiorari* to remove thither the indictment and proceedings for the purpose of moving for a new trial. But it was resolved by the court that they had not the power of entering into the merits of verdicts and granting new trials in proceedings before inferior jurisdictions, and they refused the *certiorari*; and any objections to the indictment must be taken after judgment by writ of error. (*R. v. Pennegoes*, 1 *B. & C.* 142.) One reason given why a *certiorari* should not issue after verdict and before judgment was that the court above, not having heard the evidence, would not be able to give judgment. (13 *East*, 412, n.)

In *R. v. D. Jackson*, (6 *T. R.* 145,) the defendant had been convicted at the quarter sessions upon an indictment for extortion, and then removed the indictment between verdict and judgment, and obtained a rule calling upon the prosecutor to show cause why judgment should not be arrested for some objections to the indictment. And Lord Kenyon said that the removing of proceedings in this stage from inferior jurisdictions ought to be discouraged; for that in cases where the punishment is discretionary, and this court should be of opinion, after hearing the case argued, that the judgment ought not to be arrested, a *procedendo* must be awarded, and the party sent back again to the inferior jurisdiction to receive judgment.

Even where a defendant, in an indictment for a misdemeanour, which had been traversed from a prior sessions, surreptitiously obtained an acquittal by not complying with the practice of the sessions in giving notice of trial to the prosecutor, and bringing on the indictment for trial before the felonies had been disposed of, the Court of Queen's Bench would not grant a *certiorari* to remove the indictment, in order to set aside the verdict. (*Reg. v. Unwin*, 7 *Dowl.* 578.)

In *R. v. Gwynne*, (2 *Burr.* 749,) the court (on a defended motion) granted a *procedendo*, at the instance of the defendants, upon an

Where defendant has confessed the charge.

3. *Time of applying for.*

indictment for an assault at the quarter sessions at Brecon, removed into the Queen's Bench by *certiorari*, because the *certiorari* had not issued till after the defendants had confessed the assault below; though the conviction was not after trial, and though several of the justices were sworn to be near relations of Mr. Gwynne, one of the defendants,—namely, his father, two brothers, and an uncle.

Where a special verdict.

Where there has been a *special verdict*, even at the Old Bailey, it may be removed in order to be argued and more solemnly decided in the superior court. (2 *Hawk.* c. 27, s. 31; *Bac. Ab. Certiorari*, [A].) But in the case of *R. v. Nichols*, (13 *East*, 412, n.), which was the case of an indictment for a conspiracy, *Lee*, C. J., said he knew no instance of a special verdict from Hicks's Hall removed into the Queen's Bench, and that if a conviction were removed thither by *certiorari*, the court would not give judgment upon it. It seems, however, that this is only so where the fine is uncertain. (*Id.*)

If the application be neglected until too late, the only course left to the party is a writ of error, under which, however, defects only apparent on the face of the indictment can be taken advantage of. (*R. v. Seton*, 7 *T. R.* 373; *R. v. Pennegoes*, 1 *B. & C.* 142; 2 *D. & R.* 209.)

Railway inquisition.

A *certiorari* to remove an inquisition under a railway Act may be applied for after judgment. (*R. v. Manchester, &c. Railway Co.*, 1 *P. & D.* 164.)

It is necessary that a *certiorari* should be applied for promptly to remove the proceedings of a court of sewers, (*Reg. v. Commissioners of Sewers for the Tower Hamlets*, 5 *Q. B.* 357; 7 *Jur.* 1169,) or an order for the commitment of a dangerous lunatic. (*Reg. v. Riall*, 11 *Ir. C. L.* 279, 291.)

Convictions, orders, &c.

Convictions, Orders, &c.—In the case of convictions, orders, and summary proceedings before magistrates, the proceedings may be removed by *certiorari* after judgment, because they can only be removed by *certiorari*; (*R. v. Seton*, 7 *T. R.* 373; *R. v. Jackson*, 6 *T. R.* 145;) but a *certiorari* is not necessary to remove an order of quarter sessions into the Queen's Bench for the purpose of enforcing it under the 12 & 13 Vict. c. 45, s. 18. (*Hawker v. Field*, 1 *L. M. & P.* 606; 20 *L. J. M. C.* 41.)

Must be in six months after conviction.

By 13 Geo. II. c. 18, s. 5, it is enacted, "that no writ of *certiorari* shall be granted, issued forth, or allowed, to remove any conviction, judgment, order, or other proceedings had or made by or before any justice or justices of the peace of any county, city, borough, town corporate or liberty, or the respective general or quarter sessions thereof, unless such *certiorari* be moved or applied for within six calendar months next after such conviction, judgment, order, or other proceedings shall be so had or made, and unless it be duly proved upon oath that the said party or parties suing forth the same hath or have given six days' notice thereof in writing to the justice or justices, or to two of them, (if so many there be,) by and before whom such conviction, judgment, order, or other proceedings shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the issuing or granting such *certiorari*."

The term "other proceedings" in this enactment, means other proceedings *ejusdem generis*, and therefore does not extend to indictments. (See *R. v. James*, 1 *East*, 303, n.) It does not extend to an application by the crown or prosecutor. (*Id.*; and see *R. v. Farewell*, 2 *Stra.* 1209; *Paley on Conv.* 5th ed. by *Macnamara*, 420; *R. v. Berkeley*, 1 *Ld. Ken.* 80.)

The six calendar months must be computed from the date of the conviction or order, (*R. v. Boughey*, 4 *T. R.* 281), unless there has been an appeal, when the six months are to be computed from the confirmation of the order by the sessions. (*Reg. v. Morice*, 1 *N. S. C.* 585;

R. v. Kaye, 1 D. & R. 436; *Lofft*, 544). And the writ to remove an order of sessions, subject to a case to be stated, must be applied for within six calendar months after the order made, and not within six months after settling the case; and this whatever may have been the cause of the delay. (*R. v. Bloxam*, 3 N. & M. 385; 1 A. & E. 386; *R. v. Sussex*, 1 M. & S. 631, 734.) The writ to remove an order for stopping a highway, may be applied for within six months after such order has been confirmed at sessions, though more than six calendar months have elapsed since the order was made. (*R. v. Middlesex Justices*, 5 A. & Ell. 626).

But if an application made within the six months is dismissed as being made on insufficient materials, a fresh motion cannot be made after the six months, and attached to the former proceedings, so as to make it within time. (*Reg. v. Inhabitants of Cartworth*, 1 D. & L. 837.) So if a summons is taken out at chambers in due time, and the judge made no order, and dismissed the summons, an application to the court after the six months had expired could not be referred back to the summons at chambers. (*Ex parte Inhabitants of Llanbeblig*, 2 N. S. C. 315; 15 L. J. M. C. 92; *Reg. v. Justices of Anglesea*, 10 Jur. 816; 1 B. C. R. 75.) But if a substantial and real application is made on the last day of the six months the applicant is not to suffer because the only judge before whom the matter could be heard does not happen to be in attendance on the particular day; thus it is enough if he comes and makes known to the clerk in attendance at chambers in the vacation, the nature and object of his application, and places the materials in his hands. (*Reg. v. Allen*, 4 B. & S. 915; 33 L. J. M. C. 98.) In that case, Saturday, the 22nd of August, being the last day of the six months for obtaining a *certiorari* to remove a conviction, notice of the intention to apply to a judge on that day was duly served on the convicting justices. The vacation judge being only at chambers on Tuesdays and Fridays, on Friday, the 21st of August, the defendant's agent left affidavits at the judge's chambers to be laid before the judge, with an intimation of the nature of the application, and called again on the Saturday, when the judge had not returned the affidavits; and on his next attendance, on Tuesday, the 25th of August, all the parties went before him, and it was held that the circumstances constituted an application on the Saturday, and was in time. (*Ibid.*)

An order made on the 20th of April may be removed by a *certiorari* issued on the 20th of October, but the judge's *fiat* must be obtained by that day, and it is not sufficient if the *fiat* is not obtained until the day after, although the *certiorari* may have gone on the 20th of October from the crown office. (*Reg. v. St. Mary, Whitechapel*, 2 Dowl. N. S. 964).

When the sessions commenced on the 5th of April, and an order of sessions was made on the 7th of April, an application made at a judge's chambers on the 3rd of October, and allowed on or before the 7th of October, for a *certiorari* to remove an order of removal was held within sufficient time. (*R. v. Abergele, Inhabitants of*, 5 A. & E. 795.)

Pending an appeal a *certiorari* will rarely be granted. (*R. v. Sparrow*, 2 T. R. 196, n.) In that case a person had been committed by two justices to the sessions under the Vagrant Act, against which commitment he had appealed. While that appeal was depending, a *certiorari* had been granted to remove the proceedings, but the court afterwards quashed the *certiorari*, because by the commitment to the sessions and the appeal thereto both parties had agreed to adopt that tribunal, and therefore the *certiorari* ought not to issue till the sessions had determined the case. (*R. v. Sparrow and another*, 2 T. R. 196, n. (a).)

And a rule was made in the Court of Queen's Bench, (*E. 1, Ann.*) that no *certiorari* should be granted to remove orders of justices from which the law has given an appeal to the sessions before the matter be deter-

3. Time of applying for.

When granted pending an appeal.

3. Time of applying for.

mined on the appeal, because it hinders the privilege of appealing, and if any order be removed before appeal, it shall be sent down again ; but if the time of appeal be expired, the case is not within the rule ; (see *R. v. Skellington*, 1 *Salk.* 147 ;) but advantage of this rule must have been taken upon the motion to file the order, for after it was filed it was too late. (*Id.*) But if a right of appeal to the sessions is given to the defendant alone, to be brought within a certain time, he may waive his right, and apply for a *certiorari* before the time for appealing is expired, (*R. v. Harman, Andr.* 343,) unless expressly restricted by statute ; and the restriction on the *certiorari* applies only where the party in whose favour the order was made seeks to bring it up, because he would thereby deprive the other party of his privilege of appealing. (*R. v. Willats*, 7 *Q. B.* 516 ; *R. v. Blathwayt*, 3 *D. & L.* 542.)

In the case of the borough of Warwick, (*R. v. Warwick*, 2 *Str.* 991,) there was an appeal from a poor rate, and the sessions made an order that the churchwardens should produce the books at an adjourned day, before which a *certiorari* was brought to remove that order, and it was held to lie, though the appeal was depending, else the order must be obeyed before the validity of it could be determined. It was also held that an appointment of overseers may be removed before an appeal to the sessions, for the rule extends only to the case where there was a limited time for appealing, as to the *next* quarter sessions ; but the statute of 43 Eliz. c. 2 is not so restrained, and consequently it can never be said that the time for appealing is out ; and if the appeal from an appointment is lodged, there can be no *certiorari* until the sessions have made a determination, and a *certiorari* brought pending such appeal shall be superseded. After the appeal has been determined, and the conviction confirmed, then indeed it may be removed, as in other cases ; (*R. v. Jukes*, 8 *T. R.* 625 ;) but if the conviction has been quashed it cannot be removed unless the sessions have merely quashed it subject to a case for the opinion of the court ; for when quashed, it does not appear on the face of the order of sessions but that they quashed it on the merits. If indeed a case be granted, then the order of sessions and the case may be removed by that writ, and the opinion of the court taken upon them ; and if the court quash the order, it will have the effect of setting up the conviction which may then be enforced ; (see *R. v. Allen*, 15 *East*, 333 ;) but a *certiorari* will issue for the purpose of quashing a conviction, on the ground of want of jurisdiction in the justices, although the justices had stated a case for the opinion of the court under the 20 & 21 Vict. c. 43, which was still pending when the rule for the *certiorari* was argued. (*Reg. v. Allen*, 4 *B. & S.* 915 ; 33 *L. J. M. C.* 98.)

After case stated
by justices.

IV. Mode of obtaining the Writ ; Notice of Application and Recognizance to be entered into.

Indictments, Presentments, &c.—The mode of applying for the writ of *certiorari* to remove an indictment or presentment is regulated by several legislative provisions.

Indictments, &c.

Removal by Defendants.—By stat. 5 & 6 W. & M. c. 11, (made perpetual by statute 8 & 9 W. & M. c. 33,) after reciting, in sect. 1, that abuses had existed in the removal of indictments by *certiorari*, sect. 2 enacts, “that in term time no writ of *certiorari* whatsoever, at the prosecution of any party indicted, be hereafter granted, awarded, or directed out of the said Court of King’s Bench, to remove any such

In term time
grantable only on
motion.

indictment or presentment of trespass or misdemeanour, before trial had, from before the said justices in the said courts of general or quarter sessions of the peace, unless such *certiorari* shall be granted or awarded upon motion of counsel, and by rule of court made for the granting thereof, before the judge or judges of the said Court of King's Bench sitting in open court, and that all the parties indicted, prosecuting such *certiorari*, before the allowance thereof, shall find two sufficient manucaptors, who shall enter into a recognizance before one or more justices of the peace of the county or place in the sum of twenty pounds, [see the 5 & 6 Will. IV. c. 33, s. 2, *infra*, p. 635,] with condition at the return of such writ to appear and plead to the said indictment or presentment in the said Court of King's Bench, and at his and their own costs and charges to cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereunto, to be tried at the next assizes to be held for the county wherein the said indictment or presentment was found, after such *certiorari* shall be returnable, if not in the cities of London, Westminster, or county of Middlesex; and if in the said cities or county, then to cause or procure it to be tried the next term after, wherein such *certiorari* shall be granted, or at the sitting after the said term, if the Court of King's Bench shall not appoint any other time for the trial thereof; and if any other time shall be appointed by the court, then at such other time, and to give due notice of such trial to the prosecutor, or his clerk in court; and that the said recognizance and recognizances, taken as aforesaid, shall be certified into the said Court of King's Bench, with the said *certiorari* and indictment, to be there filed, and the name of the prosecutor (if he be the party grieved or injured) or some public officer to be indorsed on the back of the said indictment; and if the person prosecuting such *certiorari*, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound in a recognizance as aforesaid, the justices of the peace may and shall proceed to trial of the said indictment at the said sessions, notwithstanding such writ of *certiorari* so delivered."

Sect. 4. Provided always, "that in any of the vacations writs of *certiorari* may be granted by any of the justices of their Majesties' Court of King's Bench, [or since 1 & 2 Vict. c. 45, s. 1, any judge of either of the superior courts,] whose names shall be indorsed on the said writ, and also the name of such person at whose instance the same is granted; and that the party or parties indicted, prosecuting such *certiorari*, shall, before the allowance of such writ or writs of *certiorari*, find such sureties, in such sum and with such conditions as are before mentioned and specified in this present Act."

The like provisions are enacted by s. 5, concerning the removal of indictments by *certiorari* within the counties of Chester, Lancaster, and Durham.

The statute 8 & 9 Will. III. c. 33, s. 1, makes perpetual the 5 & 6 W. & M. c. 11; and in s. 2, it is enacted, "That the party or parties prosecuting any *certiorari* to remove any indictment or presentment from the quarter or general sessions of the peace, may find two sufficient manucaptors, who shall enter into a recognizance before any one of his Majesty's justices of the Court of King's Bench, in the same sum and under the same conditions as is required by the said Act, whereof mention shall be made on the back of such writ under the hand of the justice taking the same, which shall be as effectual and suitable to all intents and purposes to stay or supersede any further proceedings upon any indictment or presentment for the removal of which the said writ of *certiorari* shall be granted, as if the recognizance had been taken before any one of the justices of the peace of the county or place where such indictment was found or presentment made. Also it shall be added to the condition of every recognizance taken by virtue of this and the said Act, that the party or parties prosecuting such writ of

4. Mode of obtaining it.

Recognizance to be given for trying the issue next assizes.

Except in London and Westminster.

Certiorari granted without recognizance void.

How grantable in vacation.

Recognizance may be entered into before a judge.

4. Mode of obtaining it.

Removal by prosecutors.

certiorari shall appear from day to day in the said Court of King's Bench, and not depart until he or they shall be discharged by the said court."

The provisions of the 5 & 6 W. & M. c. 11, are extended to prosecutors and other indictments than those found at quarter sessions by the 5 & 6 Will. IV. c. 33.

By s. 1 of that Act, it is enacted, that "No writ of *certiorari* shall issue from the Court of King's Bench at Westminster, for removing into that court any indictment or presentment from any court of sessions, assize, *oyer* and *terminer*, or gaol delivery, or any other court, at the instance of the prosecutor or any other person, (except his Majesty's attorney-general,) without motion first made in the Court of King's Bench, or before some judge of that court, and leave obtained to remove such indictment or presentment in the same manner as similar motions may now be made, and leave given where such application is made on the part of defendants; any law, practice, or usage to the contrary in anywise notwithstanding."

Affidavit to support application.

135 The application for the *certiorari*, whether to a court or judge, except when made by the attorney-general, should be supported by an affidavit stating the grounds for it, and as to what grounds are sufficient, see *ante*, 625; *R. v. Inhabitants of Clace*, 4 Burr. 2458; *R. v. Stannard*, 4 T. R. 161; *R. v. Burgess*, 1 Ken. Rep. 521. A defendant applying to remove an indictment from sessions by *certiorari*, on account of the probability that difficult points of law will arise, must state in his affidavit specific grounds on which legal difficulties will occur, and it was not sufficient to show that the obstruction complained of by an indictment for a nuisance consisted of buildings of great value, which had stood thirty or forty years. (*R. v. Joule*, 5 A. & E. 532; *Reg. v. Morton*, 1 Dowl. N. S. 543.) An affidavit for a *certiorari* to remove an inquisition taken to assess compensation under a railway Act, should set out an exact copy of the inquisition, or account for the omission. It should also distinctly set out particular facts, sufficient to raise a question of law, and a presumption of error in the inquisition; an affidavit, therefore, which, after reciting that the inquisition stated certain lands were authorised to be taken under the Act, added generally, "which deponent asserts is not the fact," is insufficient. (*Reg. v. Justices of Wigan*, 8 Jur. 930; *Reg. v. Manchester and Leeds Railway Company*, 3 N. & P. 439.) Corroborating affidavits may be read after a rule has been granted, but not affidavits containing new matter. (*R. v. Berkley*, 1 Ken. 81.) The affidavit should be entitled only "In the Queen's Bench," and not in the name of the prosecution in the court below. (*Ex parte Nohro*, 1 B. & C. 267; *sed vide R. v. Lewis*, 2 Stra. 704.) But the affidavits in support of an application to quash a *certiorari* after the removal of the cause to the court above ought to be entitled in the cause, though before it was so removed they ought to be entitled in the Queen's Bench merely. (*Reg. v. Jones*, 8 Dowl. 80.) The jurat to an affidavit must contain the words "before me" preceding the commissioner's name, and the omission of them is a fatal defect. (*Reg. v. Inhabitants of Norbury*, 2 N. S. C. 344; 15 L. J. M. C. 264; *R. v. Bloxam*, 6 Q. B. 528; 1 N. S. C. 370.) Where a party has once failed on account of the insufficiency of the affidavit to obtain a rule for a *certiorari*, the court will not in general allow him to renew the application on amended affidavits, especially if he appears to have suffered no injury, and to have assented to the proceedings below. (*Reg. v. Manchester and Leeds Railway Company*, 1 P. & D. 164; 8 A. & E. 413.)

The rule or order.

The application for the writ is *ex parte*. (*Symonds v. Dimsdale*, 2 Exch. 533.) And if the rule is granted, it is generally absolute in the first instance, in the case of misdemeanours; but in cases of felony, a rule to show cause only is usually granted. (*Reg. v. Spencer*, 8 D. P. C. 127; *Corner Cr. Prac.*, p. 55.) If the application is made to a judge out

of court, the affidavits should be left for his perusal, or application may be made by counsel. When the judge grants the writ, he marks on the affidavit, "Let a writ issue," and this fiat must be obtained before the writ is issued, or it will be irregular. (*Reg. v. Whitechapel*, 12 L. J. M. C. 85.)

And by statute 5 & 6 Will. IV., c. 33, s. 2, after reciting "that it is expedient to extend the powers of an Act passed in the fifth year of the reign of King William the Third and Queen Mary, intituled 'An Act to prevent Delays of Proceedings at the Quarter Sessions of the Peace,'" it is enacted, "That instead of the recognizance now by law required to be entered into before the allowance of a writ of *certiorari*, every person indicted or presented in any court of sessions, assize, *oyer* and *terminer*, gaol delivery, or any other court, who shall obtain a writ of *certiorari* for removing any indictment or presentment whatever into the Court of King's Bench, (not being in custody for want of bail to answer such indictment or presentment,) shall, before the allowance of such writ, enter into a recognizance before one of his Majesty's justices of the Court of King's Bench, or before a justice of the peace of the county or place in which the offence is charged to have been committed, or in which such person shall reside, in such sum and with such sureties as the said Court of King's Bench, or one of his Majesty's justices of the said court, shall by indorsement on the said writ order and direct; which recognizance shall contain the same conditions as are now by the said Act and another Act passed in the eighth and ninth year of the reign of King William the Third, intituled 'An Act to make perpetual and more effectual an Act' intituled 'An Act to prevent Delays at the Quarter Sessions of the Peace,' required in cases of indictments removed from the general or quarter sessions of the peace; and thereupon all the clauses and provisions contained in the said several Acts with respect to costs or otherwise shall extend to such last mentioned recognizances; and every person being in custody for want of bail to answer the charge contained in such indictment or presentment shall be detained in custody until the like recognizances as are hereinbefore directed to be entered into (previous to the allowance of such writ of *certiorari*) shall have been entered into, or until such person be discharged by due course of law."

The 5 & 6 Will. IV. c. 33, s. 2, requires persons indicted or presented in any court of sessions, &c., "or any other court," who have obtained a *certiorari*, to enter into a recognizance according to that section, and this has been held to extend to a person against whom a presentment has been made by a court of sewers, and he must therefore enter into the recognizance required by the above statute before the writ of *certiorari* can be allowed. (*Reg. v. Baker*, 28 L. J. Q. B. 377.)

Although in the form of recognizance used under the 5 & 6 W. & M. c. 11, s. 2, the payment of the costs of the prosecution is not mentioned, yet after conviction a rule will be made absolute for estreating the recognizances of the sureties unless they pay the taxed costs of the prosecution, under the third section. (See *infra*, 653; *Reg. v. Hawdon*, 1 Q. B. 464; *Reg. v. Hodgson*, 1 Dears. C. C. 14.)

It is enacted by the 16 & 17 Vict. c. 30, s. 5, that "Whenever any writ of *certiorari* to remove an indictment into the Court of Queen's Bench shall be awarded at the instance of a defendant or defendants, the recognizance now by law required to be entered into before the allowance of such writ shall contain the farther provisions following: that is to say, that the defendant or defendants, in case he or they shall be convicted, shall pay to the prosecutor his costs incurred subsequent to the removal of such indictment; and whenever any such writ of *certiorari* shall be awarded at the instance of the prosecutor, the said prosecutor shall enter into a recognizance (to be acknowledged in like manner as is now required in cases of writs of *certiorari* awarded at the instance of a defendant,) with the conditions following: that is to say,

4. Mode of obtaining it.

Further provision as to the recognizance to be entered into by the defendant.

Recognizances.

4. Mode of obtaining it.

that the said prosecutor shall pay to the defendant, or defendants, in case he or they shall be acquitted, his or their costs incurred subsequent to such removal."

By sect. 7, "If the person or persons at whose instance any writ of *certiorari* shall be awarded shall not, before the allowance thereof, enter into such recognizance as is hereinbefore provided, the court to which such writ may be directed shall and may proceed to the trial of the indictment as if such writ of *certiorari* had not been awarded."

The removal by *certiorari* of an indictment against a corporation is not within the meaning of the fifth section of the 16 & 17 Vict. c. 30, and therefore a prosecutor at whose instance it issues need not enter into the recognizances required by that section. (*Reg. v. Mayor, &c., of Manchester*, 7 E. & B. 453; 26 L. J. M. C. 65.)

There is no power at common law to enable the court to make the prosecutor pay to the defendant the costs incurred subsequently to the removal of an indictment by *certiorari*. And, therefore, unless he has entered into a recognizance in the form pointed out by the above fifth section, he is not liable to pay such costs. Where the prosecutor removed an indictment against the defendants for non-repair of a highway, upon the trial of which a verdict of not guilty was returned, and entered into a recognizance merely to prosecute with effect, and perform such orders and things as the court should direct, it was held that the defendants could not recover their costs against him. (*Reg. v. Inhabitants of East Stoke*, 6 B. & S. 536; 34 L. J. M. C. 190.)

The 16 & 17 Vict. c. 30 does not extend to any writ of *certiorari* awarded at the instance of her Majesty's attorney-general.

As to the removal of indictment or requisitions for trial into the Central Criminal Court, under the 19 & 20 Vict. c. 16, see *ante*, "*Central Criminal Court*," p. 615.

As to Central Criminal Court.

Imposing terms on defendant.

In some cases terms will be imposed upon a defendant on granting him a *certiorari*. (*Reg. v. Jewell*, 7 E. & B. 140; 26 L. J. Q. B. 177.) In one case, where the writ was applied for to remove an indictment at the Old Bailey for cheating, the court imposed the condition of the defendant's undertaking to try it the same term, which was a benefit to the prosecutor, who by the practice at the Old Bailey sessions could not have tried it so soon. (*R. v. Nehuff*, 1 Salk. 150.) Where one defendant had removed an indictment by *certiorari*, the court would not compel him to submit to terms as to the time of proceeding to trial, although he may have been the only defendant who has entered into the proper recognizances, and great delay may be the result of not so interfering. (*Rex v. Hunt*, 6 Dowl. 5.)

When more defendants than one.

If several persons be included in the same indictment, and some of them find sureties, and the others not, it has been said that the proceedings as to the first will be valid; (2 Hawk. c. 27, s. 50; Com. Dig. *Certiorari* [B];) but according to a more recent case, a *certiorari* obtained by one of several defendants, removes the indictment as to all, and the previous recognizances of all are discharged, though the parties not applying for the *certiorari* do not give any fresh security. And on an application being made, under such circumstances, for a *procedendo*, unless the defendants not suing out the *certiorari* would enter into recognizances, the court refused even a rule to show cause. (*Rex v. Boxall*, 4 A. & E. 513; and see *Keat v. Goldstein*, 7 B. & C. 525; 1 M. & R. 305; *R. v. Hunt*, 6 Dowl. 5.) But if several of the defendants, on an indictment for misdemeanour, are out on bail, and but one is in custody, and one of the defendants out on bail applies for the writ, it will be granted if the defendant in prison consents generally, but if he will not consent except on terms of being bailed, then the applicant will be required to bail him in the same amount as himself. (*Reg. v. Drake*, 22 L. J. Q. B. 304.)

Before the 16 & 17 Vict. c. 30, it was deemed a reasonable condition that if one of two or more defendants procured the removal of an in-

dictment he should give security for not only his own costs, but also those of his co-defendant or co-defendants, if convicted, and the statute has made no difference in that respect. (*Reg. v. Jewell*, 7 E. & B. 140; 26 L. J. Q. B. 177; *Reg. v. Drake*, 22 L. J. Q. B. 304; *Reg. v. Foulkes*, 1 L. M. & P. 720; 20 L. J. M. C. 196; *Reg. v. Probert*, 1 Dears. C. C. 30.)

In *Reg. v. Wilks*, (5 E. & B. 690; 25 L. J. Q. B. 47,) a judge granted a *certiorari* to remove an indictment for misdemeanour from the Central Criminal Court, on the application of one of the defendants, upon his entering into recognizances to appear and plead that term, try at the sittings after, and pay costs in the case of his conviction, the other two defendants entering recognizances to appear, plead, and try at the same time.

A single judge exercises a discretion as to granting a *certiorari*, and the court will not interfere with it unless he has been misled by fraud or misrepresentation. (*Reg. v. Wilkes*, 5 E. & B. 690; 25 L. J. Q. B. 47.)

It seems that a married woman need not enter into the recognizance where she is indicted with her husband. (2 Hale, 213.) The recognizance will not be forfeited unless the prosecutor gives rules according to the course of the court. (2 Hawk. c. 27, s. 58.) The recognizance, as we have seen by sect. 2, must be certified to the Court of Queen's Bench, together with the *certiorari* and indictment.

Convictions, Orders, &c.—We have already seen, that by the 13 Geo. II. c. 18, s. 5, *ante*, 630, no writ of *certiorari* shall be granted or issued to remove any conviction, judgment, order, or other proceeding had or made by or before any justice of the peace, or general or quarter sessions, unless it be duly proved upon oath that the party or parties suing for the same hath or have given six days' notice thereof in writing to the justice or justices, or to two of them, (if so many there be,) by and before whom such conviction, judgment, order, or other proceeding shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the issuing or granting such *certiorari*.

This enactment does not bind the crown, (see *ante*, 630,) nor does it extend to indictments. (*R. v. Battams*, 1 East, 298.)

The following rule of court respecting the condition of recognizances for the attendance of defendants on the trial of indictments was issued by the Court of Queen's Bench in Easter Term, 1852: "It is ordered, that whenever a defendant shall be required by law and the practice of this court to give recognizance to appear and answer to any indictment found in this court, or removed or to be removed into the same, it shall be added to the condition of every such recognizance, that the defendant shall personally appear, from day to day, on the trial of such indictment, and not depart until he shall be discharged by the court or judge before whom such trial shall be had, unless the court or judge shall see fit to dispense with the condition of such additional recognizance."

At the instance of the defendant the writ is granted subject to the limit as to time, and to the entering into recognizance under the provisions of the above statutes, on shewing a sufficient ground for it, unless the writ be taken away by any statute in express terms. (4 Burr, 2858.)

In cases of removals of orders, *i.e.*, by *certiorari*, where there has been an appeal to the quarter sessions, and that court has made an order, subject to a case for the opinion of the Court of Queen's Bench, the application for the *certiorari* is always made by the party contesting the order of sessions, and such party becomes the nominal defendant in the Court of Queen's Bench; and the writ may be, and frequently is, obtained by procuring counsel's hand to a motion paper

4. Mode of obtaining it.

Appeal from judge at chambers.

Convictions, orders, and summary proceedings.

Notice of application must be given.

Rule of court as to condition of recognizance.

4. Mode of obtaining it.

By whom notice
to be given.

Form of.

indorsed to move for the writ, and a consent, by counsel's hand, to a like motion paper on behalf of the opposite party, who is denominated in the Queen's Bench the prosecutor. If such consent be not procured, six days' notice of the application, reckoning the day of service inclusively and the day named for the application exclusively. (*R. v. Goodenough*, 2 A. & E. 463; *R. v. Sussex*, 1 M. & S. 631; *Corner Cr. Prac.*, p. 70.)

The notice must be given by the party at whose instance the *certiorari* is to be applied for. The writ could not be issued at the instance of any other party than the one who has given the notice, although the latter avowedly drops the proceeding, and although it is too late to give a fresh notice. (*R. v. Justices of Kent*, 3 B. & Ad. 250.) The notice must state distinctly the name of the party applying for the writ. (*R. v. Lancashire*, 4 B. & Ad. 289.) *Et per Curiam*—"The notice should be given by the party suing out the writ, and that circumstance should appear upon the face of the notice itself, for the object of it, stated by the statute, is to enable the justices to show cause against the granting the *certiorari*, and they may show for cause that the party suing out the writ was a stranger to the county, and not interested in the order. The justices therefore ought to have their attention called to the name of the party by the notice itself." (*Reg. v. Justices of Shrewsbury*, 9 Dowl. 501; *Reg. v. How*, 11 A. & E. 159.) But a notice signed in the name of a solicitor, who describes himself "solicitor for the present churchwardens and overseers of Market Harborough," is sufficient; (*Reg. v. Solly*, 9 Dowl. P. C. 115;) but the affidavits must show that the churchwardens and overseers are the parties suing out the *certiorari*, and that the solicitor has their authority. (*Reg. v. Justices of Shrewsbury*, 9 Dowl. P. C. 501.) A notice may be signed by the attorney on behalf of the inhabitants of a parish to remove a poor law auditor's allowance, under 7 & 8 Vict. c. 101, s. 35. (*Reg. v. Inhab. of Chiddingstone*, 7 Jur. N. S. 125; see also *Reg. v. Justices of Suffolk*, 18 Q. B. 416; 21 L. J. M. C. 169.) A notice "on behalf of the churchwardens and overseers of S.," if signed only by one churchwarden, is not sufficient. (*R. v. Cambridgeshire*, 3 B. & Ad. 887.) So a notice of motion for a *certiorari* to remove an order of quarter sessions, made on appeal, which set forth the names of the appellant and of the respondents, and was subscribed by "J. B., attorney for the respondents," was held sufficient, though it did not expressly state that the respondents were the parties suing forth the writ. (*Reg. v. Justices of Wilts*, 9 Dowl. 524; see *Reg. v. Justices of Suffolk*, *ubi sup.*) So a notice given on behalf of a parish, signed by the attorney for the parish, is sufficient; (*Rex v. Inhabitants of Abergele*, 5 A. & E. 795;) and a notice for a *certiorari* to remove an order relating to a borough, signed by "A. and B., solicitors for C., a ratepayer of the township of M., within and part of the said borough," is *prima facie* proof of notice from the party suing forth the writ, without any affidavit by C. that the solicitors acted by his authority. (*Reg. v. Justices of Lancashire*, 3 P. & D. 86.) But if subscribed by "A. B., solicitor for C. D.," without expressly stating that C. D. is the person suing out the *certiorari*, the justices may shew that C. D. is not the person suing it out. (*Reg. v. Justices of Lancashire*, 11 A. & E. 144.)

To whom notice
to be given.

The notice must be given to the justice or justices, or to two of them (if so many there be), by and before whom the conviction, judgment, order, or other proceeding was had. Service on the parties interested in supporting the proceedings merely, will not suffice. (*R. v. Spackman*, 9 Dowl. 1060.) If two justices convict a man under a statute which gives one justice a power to convict singly, yet the notice of the application should be served on both justices. (*R. v. Baldwin*, 1 Gude's *Prac.* 222.) So it is not sufficient to serve the notice on one justice present at the sessions making the order, and on another justice of the

same county not present; (*Reg. v. Rattislaw*, 5 Dowl. 539;) but though an interested justice ought not to take part in the proceedings on the making of the order, yet if he do interfere, a notice of the application may be rightly served upon him. (*Reg. v. Justices of Suffolk*, 18 Q. B. 416; 21 L. J. M. C. 169.)

Affidavit of service of notice of application under the 13 Geo. II. c. 18, s. 5, for a writ of *certiorari* to remove an order of quarter sessions must show that it was served on the justices who were present at the time of the making of the order, (*Reg. v. Inhab. of Cartworth*, 1 D. & L. 837; 13 L. J. M. C. 26,) or at the hearing of the appeal; (*Reg. v. Justices of Cornwall*, 1 N. S. C. 414;) and it makes no difference whether they have granted a special case or not, (*Id.*; *R. v. Justices of Sussex*, 1 M. & S. 631,) and it is not enough to state only that they were present at the time the appeal came on for hearing. (*Reg. v. Justices of West Riding*, 1 N. S. C. 406.) The service of the notice should not be made on a magistrate who took no part in the proceedings on the hearing, and avowedly abstained. (*Reg. v. Justices of Herefordshire*, 1 N. S. C. 413; 14 L. J. M. C. 44.)

The caption of an order made on appeal at quarter sessions, served by the appellants upon the respondents who did not appear at the sessions, has been held to be *prima facie* evidence against the appellants that the magistrates who are named therein as present and making the order were so, and, therefore, proper persons to be served with notice of *certiorari*; (*Reg. v. Inhab. of Sevenoaks*, 1 N. S. C. 595; 14 L. J. M. C. 92;) but since the case of the *Queen v. The Inhab. of St. James's, Colchester*, (2 L. M. & P. 314; 20 L. J. M. C. 203,) it would seem that the affidavit of service of notice must be complete of itself, and that the caption of the order will not help the supposition that the justices mentioned in it were present at the time when the order was made.

The six days for the service of the notice must be reckoned exclusively of one day and inclusively of the rest. And this is the general rule of computation in matters of practice, independently of the rule of Court, Hil. 2 Will. IV. 8. (*R. v. Goodenough and others*, 2 A. & E. 463; *Rex v. Justices of Cumberland*, 4 N. & M. 378; post, "Time," Vol. V.) A notice of motion for a *certiorari*, "on the first day of next term, or so soon after as I can be heard," is irregular, if served on the first day of that term, though the party does not, in fact, move till after the expiration of six days: *Denman, C. J. dubitante. (Re Flounders*, 4 B. & A. 865; 1 N. & M. 592.)

A notice is good on the face of it which stated an intention to move "in six days" from the giving of the notice. (*Reg. v. Rose*, 2 N. S. C. 166.) And it seems a notice to move on the 20th of a month is in time if served on the 14th of the month. (*Reg. v. St. Mary, White-chapel*, 2 Dowl. N. S. 964.)

It is not necessarily too late to object to the service of the notice after the writ has issued, and the court or a judge may supersede the writ, although the consequence may be, that if it be quashed, it will be too late to sue out a fresh one, and it is competent for the parties in an appeal, to object to the notice to justices previous to obtaining a *certiorari*. (*Rex v. Rattislaw*, 5 Dowl. 539.) So the sufficiency of the notice is still open to objection, although the rule for *certiorari* has been enlarged by consent, and the justices have appeared to show cause; (*Reg. v. How*, 11 A. & E. 159;) but the court refused to give costs on discharging a rule in such a case. (*R. v. Justices of Cambridgeshire*, 3 B. & Ad. 887.)

In support of the motion there must be an affidavit of the service of the six days' notice, which should not be entitiled in any cause. (*Ex parte Nohro*, 1 B. & C. 267; *Ex parte Wallwork*, 4 D. & L. 403.) The statement of service of the notice must show strict regularity; and a service has been held bad which was stated to have been made at the dwelling-

4. Mode of obtaining it.

Time of service.

Objection to notice when may be taken.

Affidavit of service of notice, &c.

4. *Mode of obtaining it.*

house and usual place of abode of the magistrate, by leaving a duplicate or counterpart of the said notice with the medical assistant of the magistrate, who was then ill in bed, for not stating that the service upon the medical man was made at the dwelling-house of the magistrate; (*Reg. v. Nunn*, 1 N. S. C. 49;) but it is sufficient *prima facie* evidence to show that it was dropped in a letter box at a magistrate's chambers, without showing that he was in chambers that day, especially if the magistrate admits that he received the notice with his other papers on that day. (*Reg. v. St. Mary, Whitechapel*, 2 Dowl. N. S. 964.)

If the *certiorari* was granted on an imperfect affidavit of service of notice it is too late afterwards to supply the defect by additional affidavits. (*Reg. v. Inhab. of Gilberdike*, 5 Q. B. 207; 13 L. J. M. C. 46; but see *R. v. Justices of Cambridgeshire*, 3 B. & A. 887.)

There must also be an affidavit identifying the party applying for the writ with the party who gave the notice; and it must also appear, affirmatively, on affidavit, that the justices to whom notice was given were the justices who made the conviction or order. The court will not infer the identity from the mere coincidence of names and descriptions in the order and notice and affidavit of service, or from other affidavits. (*Reg. v. Justices of Shrewsbury*, 9 Dowl. 501; *Reg. v. How*, 11 A. & E. 159.) An affidavit that the notice of motion was served on three justices, (naming them), and that they were present at the trial and hearing of the appeal, has been considered sufficient. (*Reg. v. Justices of Wilts*, 9 Dowl. 524.)

An order of sessions may be removed upon a judge's fiat at chambers absolute in the first instance; (*Reg. v. Newton-Ferrers*, 9 Q. B. 32;) and a rule was made absolute in the first instance by *Patteson, J.*, in the bail court, after consideration to bring up an order of quarter sessions for costs on application for an order of maintenance, objections being raised on the face of the order. (*R. v. Ardsley*, 9 Q. B. 36.) In *Reg. v. Allen*, (4 B. & S. 915; 33 L. J. M. C. 98,) the court seemed to think that the issuing of the fiat at chambers to remove a conviction before justices in the first instance, was discretionary with the judge, but intimated that in general a summons to show cause should be first obtained. (See *Corner Cr. Pr.*, 72.)

To remove an order of sessions where no case has been stated, the rule, or judge's order or fiat in vacation, is *nisi*. (*R. v. Inhabitants of Chipping Sodbury*, 3 N. & M. 105.) Where a case has been stated, it seems that the rule *nisi* is obtained on counsel's signature only. To remove a record from an inferior jurisdiction, to have execution, the rule is absolute in the first instance. (*Pawsey v. Gooday*, 3 Dowl. 605.) The judge's signature must be placed to his fiat. (See *post*, 643.) On the production of the rule or fiat, and entering into the requisite recognizance, when the application is made by a party indicted, the writ is made out and delivered to the party applying for it.

Stat. 5 Geo. II. c. 19, s. 1, and 12 & 13 Vict. c. 45, s. 7, empower justices of the peace in sessions to amend judgments, convictions, or orders on appeals for defects in form. (See tit. "*Amendment*," *ante*, p. 169.)

By 5 Geo. II. c. 19, s. 2, reciting that "divers writs of *certiorari* have been procured to remove such judgments or orders into his Majesty's Court of King's Bench at Westminster, in hopes thereby to discourage and weary out the parties concerned in such judgments or orders by great delays and expenses;" enacts, "that no *certiorari* shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the peace of the county or place, or before the justices at their general quarter sessions or general sessions where such judgment or order shall have been given or made, or before any one of his Majesty's justices of the said Court of King's Bench, in the sum of fifty pounds, with con-

A recognizance must be entered into before a *certiorari* granted to the defendant.

dition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties in whose favour and for whose benefit such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges, to be taxed according to the course of the court where such judgments or orders shall be confirmed; and in case the party or parties prosecuting such *certiorari* shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said justices to proceed and make such further order or orders for the benefit of the party or parties for whom such judgment shall be given, in such manner as if no *certiorari* had been granted."

4. *Mode of obtaining it.*

Otherwise *certiorari* of no effect.

Sect. 3. "The recognizance and recognizances to be taken as aforesaid shall be certified into the Court of King's Bench at Westminster, and there filed with the *certiorari* and order or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons entitled to such costs for the recovery thereof, within ten days after demand made of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt, and the said recognizance so given, upon the allowing of such *certiorari*, shall not be discharged, until the costs shall be paid and the order so confirmed shall be complied with and obeyed."

Recognizance must be certified.

Costs.

This enactment applies to convictions, although it mentions only judgments and orders. (See *Paley on Conv.* 5th ed. 421.)

It applies only to cases where there is an appeal to the sessions. A rule called upon the prosecutor of a *certiorari*, issued to remove an order of sessions, confirming, without appeal, an order of justices made pursuant to 55 Geo. III. c. 68, s. 2, for stopping up a footpath, to show cause why it should not be quashed, the recognizances required not having been entered into previous to the writ being issued, although they were entered into after the allowance: it was held that the statute did not apply to such a case. (*Reg. v. Jones*, 9 Dowl. P. C. 504; and see *R. v. Dunn*, 8 T. R. 218, n.) And in such a case the application must be to quash the allowance, and not the writ itself; and the court refused to mould the rule so as to quash the allowance. (*Ib.*)

In what cases recognizance necessary.

It does not apply to a writ of *certiorari* sued out by the prosecutor. (*R. v. Spencer*, 9 A. & E. 485.)

The enactment is not complied with by the party and his sureties entering into a recognizance in twenty-five pounds each, but it must be in the entire sum of fifty pounds. (*R. v. Dunn*, 8 T. R. 217.) The two sureties must be in addition to the party suing out the *certiorari*, who must join in the recognizance. (*R. v. Boughey*, 4 T. R. 281; *Paley on Conv.* 422.) Where a parish prosecutes the *certiorari* to remove an order of sessions, the recognizance must be entered into by some one inhabitant on behalf of the rest of the parish, with two sureties. (*R. v. Abergele*, 5 A. & E. 795; 1 N. & P. 235.)

What recognizance sufficient.

The discharge of the rule for quashing the order of sessions does in effect confirm the order within the meaning of the stat. 5 Geo. II. c. 19, s. 2, and the consequences of that section thereupon attach. (*Reg. v. Inhabitants of Latchford*, 6 Q. B. 567; 14 L. J. M. C. 20.)

Effect of discharge of rule to quash order of sessions.

The *certiorari* will not be allowed until bail is indorsed on the writ. (*R. v. Bothill*, 1 Salk. 149.)

Other matters as to.

If the writ be regularly issued, the court will not proceed upon it till it has been regularly returned. And the party suing out the writ has no right to call upon the magistrate to allow and return it, until he has entered into a proper recognizance, as the statute requires. (*R. v. Dunn*, 8 T. R. 219.)

If the order is sent down to the sessions to be re-stated, and new

4. Mode of obtaining it.

evidence is introduced, it is another order, and the recognizance will be discharged. (*R. v. Hitcham*, Burr. 504, 687.)

If a *certiorari* has been applied for in time, but the allowance of it is quashed for a defect in the recognizance, the court, under circumstances, will send the writ down again to be properly allowed. (*R. v. Abergelle (Inhabitants)*, 5 A. & E. 795.)

As to costs under these recognizances, see *post*, p. 660.

V. Form and Requisites of Writ, and Deliberation of.

Form and
requisites of writ.

The writ must not materially vary in its description of the record which it is intended to remove. (2 *Hawk.* c. 27, s. 75; *Reg. v. Turk*, 10 Q. B. 540; 16 L. J. M. C. 114.) If, therefore, it profess to remove an indictment only, it will not be effectual to remove the whole record after conviction. (*Id.*; *R. v. Dixon*, 2 Ld. Raym. 971.) And even mere formal objections have sometimes been held to be material. (*Odell v. Moreton*, Cro. Jac. 254; *Noell v. Nelson*, 1 Sid. 448; 1 Rol. 754; *Hale*, 214; *Anon.* 1 Salk. 145.) Thus if it describe the indictment to be taken before seven justices, when the proceeding itself mentions eight. (*Odell v. Moreton*, Cro. Jac. 254; and see other instances, 1 *Chit. C. L.* 387.) A material variance in the names or additions will also prejudice, as if the wrong name be inserted; (*Giggur's case*, 1 Salk. 264; *Mason v. Fox*, Cro. Jac. 633; *Anon.* 3 Salk. 80; 2 *Hawk.* c. 27, s. 81; 1 *Chit. C. L.* 387;) but if the mistake be only in the spelling, and the sound remains unaltered, it will not be material. (*Shelbery v. Bussard*, Cro. Eliz. 172; 2 *Hawk.* c. 27, s. 81.) If more defendants be named than appear on the record, the variance will be fatal. (*Anon.* 1 *Str.* 116; 2 *Hawk.* c. 27, s. 81.) But on motion to quash documents brought up by *certiorari*, the court will not entertain the objection, that the documents appear by the return to have been misdescribed in the writ. (*Reg. v. Fordham (Inhabitants)*, 11 A. & E. 73; see also *Reg. v. Turk*, 10 Q. B. 540; 16 L. J. M. C. 114, *post*, 646.) But the mode of taking such objection is by motion at the proper time to quash the return. (*Reg. v. Inhabitants of St. Olaves*, 5 Q. B. 912; 13 L. J. M. C. 161; *Reg. v. Fordham*, 11 A. & E. 73; *Reg. v. Turk*, *ubi sup.*)

The churchwardens and overseers are the agents of the inhabitants of a parish, and therefore an order described as between "the inhabitants of the parish of St. Mary Magdalen" and "the inhabitants of the parish of St. Olave," but which described the appeal as made "by and on behalf of the churchwardens and overseers of the poor of the parish of St. Mary Magdalen," was rightly so described. (*Reg. v. Inhabitants of St. Olaves*, *ubi sup.*)

Where it is intended to remove the record after verdict, it must be expressly framed for that purpose, or it will be invalid. (*Reg. v. Potter*, 2 Ld. Raym. 938; 6 *Mod.* 17; *Reg. v. Dixon*, 2 Ld. Raym. 971; 13 *East*, 410, 417.) The defendant must have a day given him in the superior court when an indictment after verdict is removed. (*Reg. v. Dixon*, 2 Ld. Raym. 971; 6 *Mod.* 61; 2 *Hawk.* c. 27, s. 81.)

Direction of.

The writ ought to be directed to the judge or magistrates of the inferior court, before whom the proceedings were originally taken. (*Sir T. Biddolf v. Sir C. Clerk*, 3 *Keb.* 13; 2 *Hawk.* c. 27, s. 38.) In some cases, however, it may be directed to the proper officer known to have the actual custody of the record. (*Dyer*, 163; 2 *Hawk.* c. 27, s. 38.) And the writ does not operate until it has reached the hands of the officer to whom it is directed, and the rule for a *certiorari* does not suspend a cause proceeding in an inferior court upon which it is served. (*Reg. v. Chasemore*, 12 *Jur.* 11.) If the person who ought to certify the record, as a justice of the peace, &c., happen to die while it

remains in his custody, the *certiorari* may be directed to his personal representatives, who must certify. (2 *Keb.* 750; 2 *Hawk.* c. 27, s. 39.) It may be directed to a justice of assize to certify a record of assize taken before his companion in his absence. (2 *Hawk.* c. 27, s. 39.) When the *certiorari* is intended to remove an indictment or recognizance, or other matter, from the sessions, it is directed either to the justices generally, or to some of them in particular, and not to the *custos rotulorum*; though it seems that it may be returned by him, especially if he style himself a justice of the peace. (2 *Hawk.* c. 27, s. 40.) And a *certiorari* to remove an order made by two justices, may be directed to the sessions, and by them returned to the superior jurisdiction. (*R. v. Inhabitants of Warminster*, 1 *Str.* 470.) If, after an appeal against an order to quarter sessions and a confirmation thereof of the order, a *certiorari* is sought to remove the original order, it should go to the justices who made it, unless it has been returned to the quarter sessions; (*Reg. v. Morice*, 1 *N. S. C.* 585; 14 *L. J. M. C.* 75;) but if it has been returned to the quarter sessions, the rule should be drawn up to bring up both the original order and the order of quarter sessions, unless the order of sessions sets out the original order, when perhaps one will be sufficient. (*Reg. v. Justices of Cornwall*, 1 *N. S. C.* 414; 14 *L. J. M. C.* 46.) To remove an indictment from the *cinque ports*, the writ is directed to the "mayor and jurats;" and to remove one from an assize in a county palatine, to the "chancellor of such county," who sends for it to the justices of assize. (2 *Hawk.* c. 27, s. 41.) A rule to show cause why a *certiorari* should not be issued to remove an inquisition under a railway act, was held properly directed to the clerk of the company, although the inquisition was out of their custody. (*R. v. Manchester, &c., Railway Company*, 1 *P. & D.* 164; 8 *L. J. Q. B.* 66.)

If by mistake it be directed to the wrong person, it has been holden that no other party can take any advantage of the error, if after the proceedings are duly returned by the parties to whom it was directed. (*Daniel v. Phillips*, 4 *T. R.* 499; *Bac. Ab. Certiorari.*)

The writ must, when it removes any indictment, or when the defendant is in actual custody, be signed by one of the judges. (1 & 2 *Ph. & M.* c. 13, s. 7; 1 & 2 *Vict.* c. 45, s. 1.) But in other cases there is no necessity for the judge to sign the writ, but only the fiat by which it is ordered to issue. (*R. v. White*, 1 *Salk.* 150; 3 *Salk.* 80; 2 *Hawk.* c. 27 ss. 37, 40.)

If it be taken out in vacation and tested, as it may be, of the preceding term, the fiat must be signed some time before the *essoin* day of the subsequent term, or the whole will be irregular, and the court will award a *procedendo*. (*R. v. White*, 1 *Salk.* 150; 2 *Hawk.* c. 27, s. 37.)

The writ is always indorsed at whose instance it was issued, and when in term, the words "by rule of court" are added. (5 & 6 *Will. & M.* c. 11, ss. 2, 4.)

"Every writ of *certiorari* for removing an indictment from the Central Criminal Court shall specify the county or jurisdiction in which the same shall be tried, and a jury shall be summoned, and the trial proceed in the same manner, in all respects, as if the indictment had been originally preferred in that county or jurisdiction." 9 & 10 *Vict.* c. 24, s. 3.

When the *certiorari* is to remove an indictment or recognizance, or other proceeding at the sessions, it should be delivered to the chairman in open court, though if it appear that it any how came to the knowledge of the justices, it must be obeyed by them. (2 *Hawk.* c. 27, s. 57; *R. v. Battams*, 1 *East*, 299.) In practice on indictments not at the quarter sessions, it is delivered to the clerk of the peace or clerk of assize. (1 *Chit. C. L.* 390.)

The 21 *Jac. I.* c. 8, s. 8, requires that writs of *certiorari* for the

5. Delivery of.

Signature of judge.

Indorsement at whose instance granted.

Venue.

Delivery of writ

Riots, &c.

5. Delivery of.

removal of an indictment for a riot, forcible entry, or assault and battery, at the quarter sessions, shall be delivered at the quarter sessions in open court.

If it be to remove a conviction or order made by magistrates out of sessions, it must be delivered to them individually.

A party indicted at sessions for obstructing a highway, obtained a *certiorari*, but without informing the prosecutor that he had done so, gave notice of trial at a subsequent sessions. The prosecutor attended with his witnesses, and on the last day of the sessions, before the case was called on, the defendant lodged his *certiorari*. The court, under all the circumstances, quashed the *certiorari*, and ordered a *procedendo*. (*R. v. Higgins*, 5 A. & E. 554.)

The writ is of no effect, unless delivered before the time for its return is expired; and see further *infra*, as to the effect of the writ before delivery.

VI. Effect of the Writ.

Removes all between *teste* and return.

The effect of the writ is to remove all proceedings of the nature described therein, which have taken place between the *teste* and return, although the proceedings originated after the *teste*. The inferior court or justices below are bound to obey the writ after production of it, and notice to them in fact of such production, when sitting in their judicial capacity; and after that, all further proceedings before them on the matter are erroneous, and *coram non judice*. (*R. v. Battams*, 1 East, 298; *Cross v. Smith*, 1 Salk. 148; 2 Ld. Raym. 836; 2 Hawk. c. 27, s. 57.)

Subsequent proceedings void.

Except where jury sworn.

But it hath been adjudged, that if a *certiorari* for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed. (2 Hawk. c. 27, s. 62; *R. v. North*, 1 Salk. 144.)

And after judgment.

And the justices may set a fine to complete their judgment after a *certiorari* delivered. (*R. v. Elwell*, 2 Ld. Raym. 1515; 2 Stra. 794.)

Or where not delivered before return.

It operates as a *supersedeas* only from the time of its being actually delivered, and not from the time of its being issued; (*R. v. Inhabitants of Seton*, 7 T. R. 373; *Reg. v. Chasemore*, 2 Jur. 11); and it will altogether lose its effect if not delivered before its return. (*Id.*; 2 Hawk. c. 27, s. 59.)

Or where forms not complied with.

But it cannot operate as a *supersedeas* until the defendant has complied with the directions of the statutes, *ante*, 641. (2 Hawk. c. 27, s. 59.)

Where awarded against law.

It is however said, that if a *supersedeas* came out of a superior court to the justices, they ought to surcease, although the *supersedeas* be awarded against law; for they are not to dispute the command of a superior court, which is a warrant to them. (*Crompt.* 129.)

Where indictment remanded.

If an indictment be removed after issue joined, and afterwards remanded, the inferior courts may proceed to trial upon it in the same way as if the writ had never been awarded. (2 Hawk. c. 27, s. 61.)

Attachment for proceeding.

But if they go on after the due delivery of the writ, where such conduct is illegal, they may be punished by attachment for contempt of the superior jurisdiction. (*Id.* s. 62; 1 Salk. 148.)

Removes record itself.

A *certiorari*, when it so requires it, removes the record itself out of the inferior court; and, therefore, if it remove the record against a principal, the accessory cannot there be tried. (2 Hawk. c. 29, s. 54; 1 C. M. & R. 18, note.)

Removes the original order of sessions, and not a subsequent one.

If an order of sessions be removed by *certiorari*, and the case be sent back to the sessions to be re-stated, and they make a new order, the *certiorari* does not operate to remove such new order. The party wishing to contest such new order must obtain a fresh *certiorari*. (*R. v. Bloram*, 1 A. & E. 386; 3 L. J. M. C. 115.)

Upon a special case being stated by sessions under the General High-

way Act, the *certiorari* issues merely as machinery, to bring the case before the court, and therefore no objections to the form of the order can be taken by reason of its being brought up with the case. (*Reg. v. Thomas*, 7 E. & B. 399.)

When the sessions have decided a point, and granted a case, the writ of *certiorari* issues for the sole purpose of bringing the case up, that the court may decide the question which is asked by the sessions, and the rule ought to be granted only upon the points reserved in the case, so that no objection can be taken to the order on its face, which has not been reserved by the sessions. (*Reg. v. Hartpury*, 8 Q. B. 566; 16 L. J. M. C. 105.) A special case being stated by a recorder on an appeal at sessions with the consent of both parties, in which he found the facts upon which the court were asked to say whether an offence was committed, the court, although the conviction was good in form, and the *certiorari* was taken away, heard the case, and decided on the evidence. (*Reg. v. Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204.)

If the defendant be convicted of a capital offence, the person of the defendant must be removed by *habeas corpus*, in order to be present in court, if he will move in arrest of judgment. And herein the case of a conviction differs from that of a special verdict, where the presumption of innocence may be supposed to continue, and therefore the personal presence of the defendant in that case is not necessary at the argument of it. (*R. v. Spragg*, 2 Burr. 930.)

It hath been holden that a *certiorari* for the removal of a recognizance for the good behaviour, or an appearance at sessions, will supersede the obligation of it; but this would be highly inconvenient, and the contrary seems to be supported by the better authority. (2 Hawk. c. 27, s. 65.)

A *certiorari* removing an indictment from the Old Bailey to the Queen's Bench, will discharge a recognizance if a prisoner have been admitted to bail on a charge of perjury. (*R. v. Richardson*, 2 Leach, C. C. 560.) But it is otherwise if the prisoner be in actual custody. (*Id.*)

When a *certiorari* is granted in order that the trial may be had in another county, it becomes necessary that the defendant should enter into fresh recognizances, in order to secure his attendance to take his trial. (See *R. v. Hunt*, 2 Chit. Rep. 135.) Where a defendant indicted at the quarter sessions for a conspiracy, had entered into sufficient recognizances to take his trial, it was held that the Court of Queen's Bench, on a removal by *certiorari*, might discharge them on motion, and compel him to enter into better securities. (*R. v. Hooper*, 1 Chit. Rep. 491.)

7. Return to the Writ.

On a case stated.

When person of defendant removed.

How far it supersedes a recognizance.

VII. Return to the Writ.

The *certiorari* may be sometimes to remove and send up the record itself, and sometimes only the tenor or copy of the record, (as the words therein be,) and it must be obeyed accordingly or it will be bad. (2 Dall. c. 195; 2 Hawk. c. 27, s. 76.) The return of a copy of the record will not do where the *certiorari* is to remove and send up the record. (*Palmer v. Forsyth*, 4 B. & C. 401; 6 D. & R. 497.)

But upon a *certiorari* to remove a conviction by a justice of the peace, a return that the record is returned to the sessions, and that a copy is annexed to the writ, if true, is sufficient; and justices ought in all cases to return convictions to the sessions, whether an appeal lies or not. (*R. v. Eaton*, 2 T. R. 285; *Reg. v. Turk*, 10 Q. B. 540; 16 L. J. M. C. 114.)

And a return of the tenor of an indictment from London, is good by the Charter of London. (*Anon.* 1 Keb. 252.)

And whenever the purport of the writ is not to proceed upon the

What to be returned.

7. *Return to the Writ.*

Return to
certiorari.

record to be removed, but only to try an issue of *nul tiel record*, it is sufficient to certify the tenor of the record, whatever the language of the writ may be. (*Sir T. Biddolf v. Sir C. Clerk*, 3 *Keb.* 13; 2 *Hawk.* c. 27, s. 71.) If the justices or the conviction be misdescribed in the writ, it may perhaps be a good return that there was no such conviction, and that they could not obey the writ; but it is too late to take that objection after the conviction has been returned. (*Reg. v. Turk*, 10 *Q. B.* 540; 16 *L. J. M. C.* 114.)

If the *certiorari* be to remove a conviction, it is sufficient to return the conviction in due form, without returning also the examinations and affidavits taken in the proceedings. (*Anon. Lofti*. 348; *Paley, Conv.* 5th ed. 426; *Reg. v. Turk, ubi sup.*)

It is the proper course to return the complaint with the conviction or order. (*R. v. Badger*, 6 *E. & B.* 137; 25 *L. J. M. C.* 81.)

Magistrates are not bound by the conviction first drawn up, whether it be merely a note of the conviction, or drawn up in a formal manner, as the conviction itself; but they are at liberty, when called upon by *certiorari* to return it into the Court of Queen's Bench, to draw up and return a more formal conviction, correcting any errors which may have existed in that first drawn up, provided the latter conviction be according to the truth and the facts of the case, as proved before the magistrates; but it is too late after the first has been quashed, or after a commitment founded on it, reciting the conviction, has been held bad, on account of the recital being true of the conviction showing a defect in it. (*Chaney v. Payne*, 1 *Q. B.* 712; *Reg. v. Turk*, 10 *Q. B.* 540; 16 *L. J. M. C.* 114; *R. v. Baker*, 1 *East*, 186; but see as to orders *R. v. Cheshire Justices*, 5 *B. & Ad.* 439, and warrants of commitment, 4 *B. & Ad.* 118.)

By the "Smuggling Act," (8 & 9 *Vict.* c. 87, s. 103,) every warrant of commitment under that or any Act relating to the customs shall be deemed valid, if it set forth an offence in the words of the Act; and no such warrant shall be held void for any defect therein if it allege a conviction of such offence, and if it appear to the court, before which the warrant is returned, that the conviction proceeded on good and valid grounds: it would seem, therefore, that if on the return of such warrant to a *habeas corpus* the grounds of conviction are relied upon in answer to an allegation of defect in the warrant, it lies upon the party supporting the conviction to prove those grounds, and that to do this he must bring up the depositions by *certiorari*. (*Van Boven's case*, 9 *Q. B.* 669; 16 *L. J. M. C.* 4.)

Orders of
removal.

The 11 & 12 *Vict.* c. 31, s. 6, provides that no objection on account of any omission or mistake in any order of removal brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such writ of *certiorari*. And orders for the maintenance of lunatics are put on the same footing as orders of removal by the 8 & 9 *Vict.* c. 126, s. 62; but this does not prevent a rule for a *certiorari* being made absolute for the purpose of quashing an order of maintenance of a lunatic, on the ground that it is bad on the face of it, although the objections were not specified on the rule *nisi*, unless, indeed, an affidavit is produced on showing cause stating that an omission or mistake in the order is relied on for the purpose of quashing it. (*Reg. v. Inhabitants of Winster*, 4 *N. S. C.* 116.)

Order of
maintenance of
lunatic.

But a different rule prevails as to orders, (*R. v. Cheshire Justices*, 5 *B. & Ad.* 439,) and warrants of commitment, (*Hutchinson v. Lowndes*, 4 *B. & Ad.* 118,) and other proceedings.

Returning too
much.

A *certiorari* was obtained to bring up all orders of sessions made in the case, with all things touching the same. The sessions returned the orders, with the notice of grounds of appeal and other papers relating to the appeal, and it was moved to quash the order upon the return and on affidavits. It was held, that the return was irregular in setting

out more than the order of sessions, and that the court could not look to the other matters in the return and affidavits, and the return ought therefore to be quashed. But as a new return, if properly made, would not support a motion to quash the order of sessions, the court discharged the rule without quashing the return. (*Reg. v. Abergele (Inhabitants)*, 8 A. & E. 394.)

But, in general, if anything be inserted in the return by way of explanation or otherwise, which is not commanded, it will not vitiate, but be rejected as surplusage. (*Inter Inhabitants of Weston Rivers and St. Peter's, Marlborough*, 2 Salk 493; *Bac. Abr. Certiorari*, [H].)

The return should be made by the party to whom it is directed; a return by the deputy of that party, or any other person will not do. (*Ashley's case*, 2 Salk. 479; 2 Hawk. c. 27, s. 66; 1 Chit. C. L. 392.)

And although the *custos rotulorum* keep the records, yet must the justices to whom it is directed return the *certiorari*; and, therefore, if it be directed to the justices of the peace, and the clerk of the peace only return it, nothing is thereby removed. (*Id.* s. 71.)

If the *certiorari* be to remove an indictment or other matter from the sessions, it is returned by the chairman.

Upon a *certiorari* to remove an indictment of a riot, or forcible entry, or the like, the return must have these words, "*as also to hear and determine divers felonies, &c.*", according to the commission; for if the return mention only that they are justices of the peace without such words, the return is insufficient. (*Dalt.* c. 195.)

The usual mode of making the return, when the *certiorari* is to remove an indictment, is to indorse on the back of the writ, "the execution of this writ appears in a certain schedule hereunto annexed, —The answer of J. P. Esquire, and the justices assigned to keep the peace in and for the county of —," and then to write the schedule on a distinct piece of parchment, and the chairman of the sessions should seal it. (*R. v. Dickenson*, 1 Saund. 134.) The words "humbly certify," &c., are unnecessary and improper. (*Carth.* 223.)

The same mode may also be adopted in making the return of a conviction or order, or other proceeding, excepting that the convicting justices, instead of the chairman, should seal the schedule. But the return may be and frequently is made, in the case of a conviction or order, without a schedule.

Annex to the writ a record of the indictment and caption of, (if the writ be to remove an indictment,) or the conviction or order, or other matter on parchment, (if it be to remove them,) and transmit them, and the return and the recognizance, (if any,) to the Crown Office of the Court of Queen's Bench.

The schedule must be made on parchment. It may be quashed if made on paper. (1 Barnard, 113.)

On a *certiorari* to remove an indictment, if the words "the jurors of our Lady the Queen upon their oath present," be omitted in the return, it will be valid. (*Carth.* 323.) It must be expressed in the caption of the indictment that the offence was presented by twelve jurors, otherwise it will be bad. (*Faulkner's case*, 1 Saund. 248, n.)

A refusal to return an indictment until payment of certain fees should be accompanied by a statement of the amount due, though fixed by act of parliament. (*Newton v. Bayley*, 4 Jur. 192.)

The return must be under the seal of the inferior court, to whom it is directed; and if they have no proper seal, under any other seal they may think fit to employ. (*Butcher's case*, 2 Cro. Eliz. 821; 2 Hawk. c. 27, ss. 65, 70.)

Also, if directed to justices of the peace out of sessions, they should put their seals to the return. A return to a *certiorari* was sent back to the justices by the court to be amended, because they did not put their seals to it, or describe themselves as justices of London. (*R. v. Kenyon*, 9 D. & R. 694; 6 B. & C. 640.)

7. Return to the Writ.

Who to make return.

Form of return, and transmitting of.

7. Return to the Writ.

And where a *certiorari* was directed to the justices of the peace, and also to the clerk of the peace, and the return was signed by the clerk of the peace, but was not sealed, the court sent back the return to be amended. (*R. v. Macnamara*, 1 A. & N. 61, Irish.)

Bail.

If the defendant, at the time of removing the conviction, be under commitment, the court, upon the return being filed, may bail him until the validity of the conviction be determined. (*R. v. Lord*, 12 Q. B. 757; 16 L. J. M. C. 15; *Paley on Conv.* 5 ed. 429, and cases there cited.) In *Re Collier and Bailey*, (3 E. & B. 607,) a rule *nisi* was granted for the recommittal of the defendant who had been so bailed, and for the estreating of his recognizances, the conviction having been confirmed. (*Id.*)

Quashing return.

If the return be defective, the court may quash it. See the case of *R. v. Abergel*, 8 A. & E. 394, ante, 647, in which the court quashed the return; and see *R. v. Turk*, 10 Q. B. 540; 16 L. J. M. C. 114.

Amendment of.

But, in general, a defect, if not of a substantial kind, will be allowed to be amended. (*R. v. Atkinson*, 4 East, 175, n.; 1 Saund. 249, n.)

Enforcing return.

The return may be enforced by a side-bar rule, commanding a return; but if this side-bar rule be obtained without sufficient ground, the defendant may move to have that rule discharged. (*R. v. Battams*, 1 East, 299.)

After this side-bar rule and notice, in general the inferior jurisdiction are bound to make return, even though it should appear that the writ was improperly granted, for it rests entirely with the Court of Queen's Bench to recall its own process. (*R. v. Battams*, 1 East, 306; *R. v. Hube*, 5 T. R. 543; 13 East, 416, n.)

A clerk of the peace cannot refuse to transmit the records in his custody on account of the fees due to him, for he has no lien upon them to justify his detainer; (1 *Leach*, 201;) for his fees his remedy is by action; for his charges of bringing the defendant up, the defendant may be remanded. (*Anon.* 1 *Str.* 308; *White v. Haugh*, 2 *Str.* 1262.)

If the return be still withheld, an *alias*, then a *pluries*, or a *causum nobis significes*, will be awarded, and then an attachment. (*Crompt.* 116; *Fitz. N. B.* 245.)

False return.

If the person to whom a *certiorari* is directed do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in cases of commissioners of sewers, or for not repairing highways, or for some such special causes because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the Queen. (*Dalt.* c. 195; see tit. "*Justices*," Vol. III.)

VIII. Quashing the Writ, &c.

Quashing the writ, &c.

If the writ appear to have been improperly directed or granted, it will be quashed, *quia improvide emanavit*, upon cause being shown to the jurisdiction from whence it was awarded. (*R. v. Inhabitants of Seton*, 7 T. R. 373; *R. v. Sparrow*, 2 T. R. 196, n.)

And if the return has been filed, the court will order the writ to be quashed after a return to a *certiorari*, and the return taken off the file, and award a *procedendo*. (*R. v. Wakefield*, 1 *Burr.* 489; 2 *Ken.* 164; 2 *Harw.* c. 27, s. 63.)

And a judge of either of the superior courts sitting at chambers has the same power as the Court of Queen's Bench to order a *procedendo* to issue. (*Reg. v. Scaife*, 2 *Den. C. C.* 513; 18 Q. B. 173; 21 L. J. M. C. 221.) He exercises this power under the 11 Geo. IV. & 1 Will. IV. c. 70, s. 4, and 1 & 2 Vict. c. 45, s. 1.

And an order to quash the writ and have the return taken off the

file might be obtained on motion previous to a motion for a *procedendo*. (4 Burr. 2456; *R. v. Micklethwayte*, *id.* 2522.)

If in consequence of an error in the return the record is not removed, they will either quash the writ and order a new one, (1 Salk. 147; 2 Stra. 1228; *Hawk.* b. 2, c. 27, s. 82; *Williams, J., Certiorari*, [X.],) or they will allow the court below to proceed, and take such order for the defendant's appearance before either tribunal, as the circumstances of the case may require. (2 Keb. 142; *Hawk.* b. 2, c. 27, s. 82; *Williams, J., Certiorari*, [X.])

Or if the writ be issued too late for the trial to take place at the next holding of the court into which the prosecution was removed, the court will quash the writ, and order a *procedendo*. (See 1 Chit. C. L. 381, n. (c).)

If not returned at all, the court will grant a *supersedeas*.

If the party who obtained the *certiorari* did so for delay, and that can be established by his admission or otherwise, the court will quash it. (*Sanders v. Sheil*, 3 Dowl. 90; and see *R. v. Higgins*, 5 A. & E. 554, ante, 644, where the writ was quashed where it was delivered purposely late.)

If the proceedings have been removed at the defendant's instance and he has entered into a recognizance, and that recognizance has been forfeited, the court will not in general hear any motion to quash the writ. (2 Hawk. c. 27, s. 55.)

A motion to quash a *certiorari* must not be delayed, and it is too late to make it when a whole term has elapsed without objection, after the case has been brought up, on the ground of a denial of preliminary facts stated in the affidavits used to obtain the writ. (*Reg. v. Inhabitants of Basingstoke*, 3 N. S. C. 693; 19 L. J. M. C. 28.)

Affidavits in support of an application to quash a *certiorari*, bringing up an order of justices for stopping up a road, must be entitled in the names of the parties in the proceeding, and not merely "In the Queen's Bench." (*Reg. v. Jones*, 8 Dowl. 80.)

9. Proceedings after Removal.

Affidavits in support of motion.

IX. Proceedings after Removal.

On the Removal of an Indictment.—As soon as the writ is returned to the crown office, the prosecutor's attorney makes out a *venire* for the defendant to appear; upon which the attorney gets him *summoned* by the sheriff, and upon the return of it, the defendant usually appears, when he is entitled to an imparlance to the following term; but if he does not then appear, the prosecutor's attorney, upon the production of the sheriff's return to the *venire*, makes out a *distingas*, upon which 40s. issues are levied on the defendant's effects; and if there is no appearance on the return of that, on the affidavit of the writ having issued and being returned as above, the court will award an *alias*; and after that a *pluries*, &c., enlarging the issues on every writ until the defendant appears, when they will compel him to pay the costs of the writs of *distingas* out of the issues levied. But if the sheriff returns the *venire non est inventus*, then, upon the production of such return, the prosecutor's attorney sues out a *capias* for the sheriff to take the defendant into custody, which he will do; whereupon the defendant to procure his enlargement, must enter an appearance, upon which he will be discharged by *supersedeas*. If the defendant be taken on a warrant, which a judge may grant on the return of the *venire*, the defendant must then put in bail before he is discharged. (*Hand. Prac.* 42, 43; 1 Chit. C. L. 396, 397.)

Compelling defendant's appearance after removal of an indictment.

After proceedings have been removed into the Court of Queen's Bench, as, for instance, an indictment from quarter sessions, the court,

9. *Proceedings after Removal.*

Compelling better bail.

or a judge of any of the three superior courts, may, in his discretion, make an order for the issuing of a *procedendo* to send it back, either in the first instance, or after a summons to show cause. (*Reg. v. Scawfe*, 18 Q. B. 773; 21 L. J. M. C. 221.)

If the bail in the recognizance are exceptionable, the prosecutor's attorney may compel the defendant to add sufficient bail, by taking out and serving on the defendant's attorney a judge's summons for a *procedendo*, unless better bail be put in. (*Hand's Prac.* 39; 1 *Chit. Rep.* 491.) But the court or judge will not, after the defendant has been admitted to bail, increase such bail on an affidavit of aggravating facts. (*R. v. Salter*, 2 *Chit. Rep.* 109.) If he do not find sufficient sureties, then, upon the attendance of the summons, the judge will order the *procedendo* to issue, and by which the indictment and proceedings will be sent back to the court in which the prosecution was begun; (*Hand's Prac.* 39;) and if the indictment were removed after issue joined, the inferior court is to proceed to trial as if no *certiorari* had been issued. (*Hawk. b. 2, c. 27, s. 61.*)

Compelling defendant to proceed to trial.

The prosecutor's attorney may compel the defendant to proceed to trial, according to the terms of his recognizance, by taking out and serving on the defendant's attorney a side-bar rule to estreat the recognizance, unless he appears and pleads within the term, and proceeds to trial at the sitting of *nisi prius* after the term, if in town, and in the country at the next assizes; (*Hand's Prac.* 40;) and unless the prosecutor, by obtaining and serving the usual rules, compels the defendant to proceed to trial, the recognizance will not be considered as forfeited; (*Hawk. b. 2, c. 27, s. 54*;) and if the cause be not tried on account of a defect of jurors, and the prosecutor will not pray a *tales*, the defendant is not liable to costs. (*Stra.* 937.)

In a case where the defendant being taken up on the 8th of June, upon an indictment for a libel, entered into a recognizance to appear and plead within the first eight days of Trinity term, and to try the cause at the sittings after that term; the defendant pleaded not guilty, but did not give notices of trial, or make up the record either for the sittings after Trinity or Michaelmas term, nor were the recognizances respited; the prosecutors gave notice of trial after Trinity and Michaelmas term, but the causes were not tried; the defendant was ready and willing to take his trial. On both these occasions the recognizances were estreated in Hilary term without any notice to the defendant, or any motion by the prosecutor; it was held that this estreat was regular. (*R. v. Clark*, 5 B. & A. 728.)

When the recognizance has been forfeited, the court will not hear any motion to quash the indictment. (*Hawk. b. 2, c. 27, s. 35.*)

On removal of indictment for felony, sometimes defendant may plead by attorney.

On an indictment for felony, removed by *certiorari*, the Court of Queen's Bench, under special circumstances, will order that the defendant shall be at liberty to plead by attorney, and that he and the prosecutor shall be restrained from bringing error, on account of pleas so pleaded instead of being pleaded in person. (*R. v. Penpraze*, 1 N. & M. 312; 4 B. & A. 573.) As to the rules to plead, see 6 *East*, 583.

When, after the *certiorari*, the defendant is ordered to be tried under the 19 & 20 Vict. c. 16, at the Central Criminal Court, the court will not make it a condition, under sect. 24, that the prosecutor shall furnish the defendant with evidence which it is suggested has been obtained by the prosecutor since the taking of the depositions. (*Reg. v. Palmer*, 5 E. & B. 1024; 2 *Jur. N. S.* 235.)

When allowed to defendant as a pauper.

Where the defendant, at the period when the indictment is removed, was a prisoner in a debtor's prison, the court will, under the circumstances, and on the usual affidavit, allow him to sue *in formâ pauperis*. (*Ex parte Nicholson*, 4 *Jur.* 506.)

Of amendments. Striking out count, &c.

The court above cannot alter or in any way amend the indictment, because they have not the concurrence of the jurors by whom it was presented; (1 *Chit. C. L.* 297;) and, therefore, however long it may appear,

they cannot strike out a count from the record. (2 *Stra.* 1026 ; *Com. Dig. Amendment*, 2, c. 1.) But they may make an alteration in the caption, for that is a mere history of the prior stages of the cause, and is therefore liable to be corrected. (4 *East*, 175 ; *id.* n. (b.) ; 1 *Saund.* 249, n. 1 ; see *ante*, tit. "*Amendment*," 166, 168.)

All the subsequent process, after plea to the trial, is exactly the same as if the cause had originally been commenced in the court to which the *certiorari* has removed it. (*Hand's Prac.* 40, 43, 49 ; *Hawk.* b. 2, c. 27, s. 83.) If the proceedings be removed from the assizes, the place of trial will be the same, only on the civil instead of the criminal side of the hall, where they are holden. (5 *T. R.* 628.)

Two presentments before commissioners of sewers, the one as to *I. Wall*, and the other as to *P. Wall*, were removed by *certiorari*, and, on issues joined, were to be tried at the *nisi prius* side of the assizes. The defendant entered his two records, *I. Wall* first in the cause list, and *P. Wall* second in the cause list. After that the prosecutor entered his two records, *P. Wall* third in the list, and *I. Wall* fourth : held, that the prosecutor had not the right of having the cases tried on his records, and that they should be tried in the order in which they were entered. (*R. v. Leigh*, 7 *C. & P.* 813.)

The proceedings from the trial to the defendant's coming up for judgment are the same as upon informations for misdemeanours, (*Hand's Prac.* 43, 44,) except that the notice of the motion for the judgment of the court is given to the bail as well as to the defendant, and sometimes the prosecutor is entitled to costs, and as to which, see *post*, 653.

It seems that after an indictment is removed by *certiorari* and abandoned by the original prosecutor the proceedings may be continued by another party. (*R. v. Wood*, 3 *B. & Ad.* 657.) An indictment for a nuisance in keeping a common gaming-house was preferred by a private prosecutor, who, after removing it by *certiorari*, proceeded no further. Another party then caused a *venire* to be issued, and other steps taken for bringing the case to trial, though desired by the original prosecutor to forbear. On motion by the latter for a stay of proceedings (he alleging that the offence had been discontinued), the Court of Queen's Bench refused to interfere, the prosecution being for a public nuisance (*Id.*)

On the Removal of a Conviction or Order, &c.—With respect to what may be discussed on the hearing of the case, to quash the conviction or order, we have already seen that a *certiorari* will not be granted to remove a conviction or order, unless it be for some defect apparent on the face of it, and that if the justices have jurisdiction, the court or judge will not enter into any examination of the facts or reasons upon which the conviction or order is founded, unless in the case of an order of sessions made subject to a special case. (*Ante*, 626.)

If the defendant at the time of removing a conviction by *certiorari* be under commitment, the court, upon the return being filed, may bail him till the validity of the conviction be determined. (*R. v. Reader*, 1 *Stra.* 531 ; *Reg. v. Lord*, 12 *Q. B.* 757 ; 16 *L. J. M. C.* 15, *ante*, 648.) But in a case of commitment under the Vagrant Act, 17 Geo. II. c. 5 (now repealed), the court having refused a *certiorari* on the ground of an appeal depending at the sessions, rejected the defendant's application to be out on bail till the appeal should be decided. (2 *T. R.* 196 ; *Paley on Conv.* 5th ed. 429.)

In the case of *R. v. Reason*, (6 *T. R.* 375,) it was determined that if justices acquit a defendant against whom an information is laid before them for a penalty, the Court of Queen's Bench cannot reverse the judgment, though the justices state (on the return of a *certiorari*) evidence, which *prima facie* is sufficient to convict, and no contradictory or explanatory evidence. And the court said, that the evidence

9. Proceedings after Removal.

Proceedings to trial.

After trial.

Proceedings may be conducted by another prosecutor.

After a removal of conviction or order.

Bailing defendant when under a commitment.

Court cannot judge of evidence given in courts below.

9. *Proceedings after Removal.*

given was entirely and exclusively for the consideration of the justices below, who were placed in the situation of a jury; and as they had acquitted the defendant, this court could not substitute themselves in the place of the justices acting as jurymen, and convict him; that they could not judge of the credit due to the witnesses whom they did not hear examined; that they could only look to the form of the conviction, and see that the party, if convicted, had been convicted by legal evidence; and they must consider on this return, that the magistrates had determined on the facts, and not on the law of the case as distinguished from the facts. (See, however, *Reg. v. Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204, ante, 645.)

And touching the distinction between a conviction removed by *certiorari* and one brought before a court upon an appeal; on an appeal, the whole case is gone into, and evidence is to be given to support the conviction; but when the conviction is removed by *certiorari*, the facts cannot be made the subject of inquiry, (*R. v. Jukes*, 8 T. R. 542,) at least for the purpose of questioning the conclusion at which the justices arrived.

The court, on the legality of a conviction, cannot take cognizance of any fact contained in the *certiorari* by which the conviction is removed, for the court cannot take notice of any fact which does not appear upon the face of the conviction itself. (*R. v. Liston*, 5 T. R. 338, ante, 646.)

Except where no jurisdiction.

But it seems that on the question of *jurisdiction* to make a conviction or order, the court may look into the facts and receive affidavits. Therefore, on a return to a *certiorari* for bringing up an order of magistrates, made in a matter over which an act of parliament had given them original and final jurisdiction as to the merits, affidavits are admissible to show that the charge made before the magistrates was one over which they had no jurisdiction; but when a sufficient charge, appearing on the face of the information to be within their jurisdiction, is brought before them, they act within their jurisdiction in commencing the inquiry, and affidavits are not admissible to show that they came to a wrong conclusion. (*Reg. v. Bolton*, 1 Q. B. 66; 10 L. J. M. C. 49.) Nor, if the justices return the evidence, will the court review their judgment thereupon. (*Id.*; and see *R. v. Inhabitants of Abergele*, 5 A. & E. 795; 7 L. J. M. C. 109, ante, 646.)

The test of jurisdiction under this rule is, whether or not the justices had power to enter upon the inquiry, not whether their conclusions, in the course of it, were true or not. (*Id.*)

The objection that the instrument removed is not of a judicial nature may be taken on showing cause against the rule to quash it. (*Reg. v. Inhabitants of Hatfield Peverel*, 18 L. J. M. C. 225; *Reg. v. Overseers of Salford*, 21 L. J. M. C. 223.)

Course to adopt when an order of sessions quashing a conviction for defect in form, is quashed on *certiorari* in Queen's Bench.

In a case where the sessions on an appeal quashed a conviction on the 39 & 40 Geo. III. c. 106, s. 4, for a defect in form, without hearing the merits, and their order was removed by *certiorari* into Queen's Bench, that court, being of opinion that there was no defect in the form, quashed the order, and sent back the case to the sessions to enter continuances and hear the appeal on the merits. (*R. v. Ridgway*, 5 B. & A. 527; 1 D. & R. 132; see also the case of *R. v. Eaton*, 1 T. R. 89, and ante, tit. "Appeal.")

Sending back record.

It is a general rule that if a record, removed by *certiorari*, be once filed in the Queen's Bench, it cannot be sent back or remanded; but that rule is not inflexible, and if there would be a failure of justice, as if the Court of Queen's Bench, on the removal of a conviction, would not have jurisdiction to imprison the defendant in the event of his not paying the penalty in which he was convicted, then the court, on confirming the conviction, would award a *procedendo*, in order that the justices might enforce it by warrant of distress or otherwise. (*R. v. Neville*, 2 B. & Ad. 299; see 2 Hawk. c. 27, s. 68.)

Enforcing.

After a conviction by magistrates has been affirmed on *certiorari*

after a case from the sessions on appeal, the court will order a *procedendo* to take the conviction back to the magistrates, that they may enforce it. (*Reg. v. Rushworth*, 1 N. S. C. 415; 9 Jur. 161.)

After the *certiorari* has gone to bring up a conviction, the court may order the prisoner to be brought up and admitted to bail, until the argument on the *certiorari*, when, if the conviction is affirmed, he can be committed in execution for the residue of his imprisonment. (*Reg. v. Lord*, 12 Q. B. 737; 16 L. J. M. C. 15, *ante*, 648.)

By the 12 & 13 Vict. c. 45, s. 7, "if upon the return to any writ of *certiorari* any objection shall be made an account of any omission or mistake in the drawing up of any order or judgment made or given by any justice or justices of the peace," and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order, or giving such judgment, to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court upon such terms as to payment of costs as it shall think fit, to amend such order and judgment, and to adjudicate thereon, as if no such omission or mistake had existed. Provided always that no objection on account of any omission or mistake in such order or judgment brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such *certiorari*." (See further, tit. "*Amendment*.")

10. *Costs, after removal by.*

Amendment.

A conviction under the Game Act, (1 & 2 Will. IV. c. 32, s. 30,) of four persons for a trespass in pursuit of game, adjudicated each of them to pay a certain fine, and a certain sum for costs, and in case of default to be imprisoned for a month, "unless the said several sums, and the costs and charges of conveying each of them (naming them), so making default to the common gaol be sooner paid," was held bad, because it meant that each defendant was to be imprisoned until he had paid the penalty, and the expense of conveying to prison not only himself but the other persons convicted, and this was more than the statute justified. A *certiorari* had been obtained, and upon a rule to quash the conviction the court said it was not a case in which they would exercise the discretionary power of amendment under sect. 7 of 12 & 13 Vict. c. 45. (*Reg. v. Cridland*, 7 E. & B. 853; 27 L. J. M. C. 28.)

X. Costs, after Removal by.

After Removal of Indictments.—By 5 & 6 W. & M. c. 11, s. 3, if the "defendant prosecuting such writ of *certiorari* (see the other sections of the Act, *ante*, 632, 635) be convicted of the offence for which he was indicted, that then the said Court of King's Bench shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice of the peace, mayor, bailiff, constable, headborough, tithingman, churchwarden, or overseer of the poor, or other civil officer, who shall prosecute upon the account of any fact committed or done, that concerned him or them, as officer or officers to prosecute or present, which costs shall be taxed according to the course of the said court, and that the prosecutor for the recovery of such costs shall, within ten days after demand made of the defendant, and refusal of payment upon oath, have an attachment granted against the defendant by the said court for such his contempt; and that the said recognizance shall not be discharged till the costs so taxed shall be paid." (See *Reg. v. Inhabitants of East Stoke*, 6 B. & S. 536; 34 L. J. M. C. 190, *ante*, 636.)

Prosecutor to be paid in some cases his costs after removal of indictment.

This statute is a remedial one. (See *per Lord Ellenborough*, C. J., in *R. v. Taunton St. Mary*, 3 M. & S. 465; and *per Lord Kenyon*, C. J., in *R. v. Kettleworth*, 5 T. R. 33.)

Statute a remedial one.

10. *Costs, after removal by.*

What offences within the Act.

Who a prosecutor within the Act.

The Act extends to the costs of the prosecution of an offence, whether it be a *nonfeasance* or a *malfeasance*. (*R. v. Inhabitants of Taunton St. Mary*, 3 M. & S. 471.)

A merely nominal prosecutor is not within the Act, and consequently not entitled to costs. (*Reg. v. Inhabitants of Bernard Castle*, 5 Jur. 799.) Therefore where the expenses of an indictment for a misdemeanour were defrayed by subscription, and the nominal prosecutors incurred no expense, they were held not within the Act, (*R. v. Cook*, 1 M. & R. 526,) the object of the statute being to indemnify the prosecutor from the costs which he is liable to pay himself, unless paid by the party convicted. Where the expenses of a prosecution for an indecent assault on the lord mayor of London, were paid out of the funds of the corporation, it was held that the court had no power to order the defendant, after conviction, to pay the costs of the prosecution under this statute. (*Reg. v. Wilson*, Dears. C. C. 79; 22 L. J. M. C. 53.) But if the parties aggrieved are the prosecutors, they will be entitled to the costs, although the funds for carrying on the prosecution were contributed to or provided by other persons. (*Reg. v. Dobson*, 9 Q. B. 302; 15 L. J. Q. B. 97; *Reg. v. Williams*, 6 Q. B. 273.) Where an indictment for a libel on the governor of a parish workhouse was preferred by the direction of the select vestry of the parish, it was held that the libelled party was not a prosecutor as a party grieved within the Act. (*R. on prosecution of Brindley v. Dewhurst*, 5 B. & A. 405; 2 N. & M. 253.) So in *R. v. Edwards*, (5 B. & Ad. 407,) the indictment was for an assault on a watchman or constable within the borough of *Derby*. The prosecution had been carried on by certain paving and lighting commissioners, acting under a local Act for that borough, and the court were of opinion that the nominal prosecutor was not a party grieved within the meaning of the statute, nor were the commissioners public officers prosecuting as such. (See as to this case *Reg. v. Earl of Waldegrave*, 2 Q. B. 346, *post*, 656.)

His name need not be indorsed on indictment.

In *R. v. Smith*, (1 Burr. 54,) it was moved that before the recognizance should be discharged the prosecutor should have his costs. The objection was that no name of any person, as being the party grieved or injured, or a public civil officer, was indorsed upon the indictment. But by the court, "It is enough, if it be proved that the prosecutor was such officer, and here it is proved by affidavit." And it was ruled that the prosecutor should have his costs before the recognizance should be discharged.

Who a party aggrieved within the Act.

As to when the prosecutor is a party grieved within the meaning of the Act, it has been held that persons dwelling near to a steam-engine, the smoke of which affected themselves, their furniture and dwelling-houses, and was very offensive and injurious, were parties grieved. (*R. v. Dewsnap*, 16 East, 194.) And Lord Ellenborough there observed, "that although a nuisance may be public, yet there may be a special grievance arising out of the common cause of injury, which presses more upon particular individuals than upon others not so immediately within the influence of it." So the prosecutor of an indictment for stopping up an ancient and common footway, which he had used for some years, and had since been obliged to take a more circuitous route, was held to be a party grieved within the Act. (*R. v. Williamson*, 7 T. R. 32; and see *R. v. Taunton St. Mary*, 3 M. & Sel. 465.) But where the prosecutor of an indictment for obstructing a highway did not apply for the costs until after the defendant's recognizance had been discharged, and until two years after judgment, and it did not appear that he had ever used the highway before it was stopped, and whilst it was stopped declared he did not care about it, the court held that he was not entitled to costs, although the prosecution was at his expense. The court thought he was not a party grieved; that there ought to have been some special and peculiar injury accruing to him from the obstruction, besides that which affects all the subjects in common with

him. (*R. v. Incledon*, 1 *M. & S.* 268. See also *Miles v. Rose*, 4 *M. & S.* 101.) Rated inhabitants of a parish, who were prevented by rioters from entering the vestry-room to attend a meeting called for the purpose of imposing a church rate, and who afterwards prosecuted the offenders, are parties grieved within the meaning of the above Act. (*R. v. Thompkins*, 2 *B. & A.* 287.)

10. Costs,
after removal
by.

But a law society composed exclusively of attorneys practising in the county of Kent, who prosecuted an indictment against a defendant for practising as an attorney without being duly qualified, and as such acting as clerk to a board of guardians, were held entitled to their costs under the 5 & 6 *W. & M.* c. 11, s. 3. (*Reg. v. Buchanan*, 3 *Cox C. C.* 427.)

The person bound over to prosecute an indictment may naturally be supposed to be the prosecutor, but the court will enquire, for the purpose of giving costs under the statute, who was the real prosecutor. And where the defendant in an indictment for the embezzlement of monies belonging to a banking company, removed it by *certiorari* from sessions, and was convicted, the court ordered costs to the public officer of the company, who was a shareholder, and had retained the attorney, and paid all the expenses to carry on the proceedings, although a clerk to the company was bound over to prosecute. (*Reg. v. Bishop*, 6 *D. & L. P. C.* 499; 18 *L. J. M. C.* 63.)

A prosecutor of an indictment, removed by *certiorari*, against a defendant for perjury committed upon an affidavit in Chancery, which perjury was unsuccessful, and occasioned no actual damage to him, is nevertheless "grieved or injured" within the meaning of the statute, and entitled to his costs. (*Reg. v. Major, Dears. C. C.* 13; 21 *L. J. M. C.* 221.)

In *R. v. Cook*, (1 *M. & R.* 526,) it was made a question on an indictment for a misdemeanour, whether the near relations of a person whose body has been disinterred for the purposes of dissection were parties grieved within the Act, but the point does not seem to have been decided.

An indictment for a libel on a political dinner charged to have a tendency to produce a riot at that dinner, was removed by *certiorari* at the instance of the defendants; it was held that a person injured at a riot which took place at that dinner was not a person grieved within the Act. (*Reg. v. Caldecott*, 1 *Dowl. N. S.* 556.)

Nor does the Act apply to persons intended to be aggrieved, but only to those who have suffered actual injury. (*R. v. Ingleton*, 1 *Wils.* 139). The defendant was indicted for attempting to set fire to the house of one Easton, in York, and the indictment also charged that the defendant solicited Mason, one of the prosecutors, to help to set fire to the house. Mason and one Glenton informed the mayor of York of this, who bound Mason and Glenton over to prosecute the defendant. The said defendant removed the indictment by *certiorari* into the Court of Queen's Bench, and was thereupon convicted and fined. On payment of the fine, it was moved that the recognizance should be discharged. Unto which it was objected that the defendant was obliged to pay the costs of the prosecutors. But, by the court,—"This case is not within the Act; for the Act extends only to officers and persons really injured, which neither Glenton nor Mason are, for there was no damage done to the house, but only intended to be done, nor are either of them officers." And the recognizance was discharged. Where a side-bar rule has issued under 5 & 6 *W. & M.* c. 11, s. 3, and an attachment is moved for by the prosecutor for non-payment of the costs, it is not necessary to have an affidavit that the prosecutors are the parties grieved. (*Reg. v. Hills*, 2 *E. & B.* 176; 22 *L. J. Q. B.* 322.)

The costs thus given by the statute of Will. to persons acting in public capacities can only be claimed by them when they prosecute for some offence which actually comes within their own peculiar cogni-

Who a civil
officer within the
Act.

10. *Costs, after removal by.*

zance, and not a public or private grievance, with which they think fit to interfere.

Therefore, a justice prosecuting a gaoler for an escape is not entitled to costs. (*R. v. Sharpness*, 2 T. R. 47.) The prosecutor, a justice of the peace, had indicted the defendant, who was the keeper of the gaol at St. Alban's, for suffering a prisoner to escape, who had been committed by him for felony; upon which indictment the defendant had been convicted. And it was contended that the prosecutor was entitled to costs under the 5 & 6 W. & M. c. 11, s. 3, as being a *public officer* prosecuting for the benefit of the public. *Ashhurst, J.* "It appears to me the defendant ought not to be charged with the costs; this is not one of those instances mentioned in the 3rd section of the Act, which only extends to those officers who prosecute or present *ex officio*, or where the prosecution is carried on by the party aggrieved. If a justice were to *present* a road, and the same were afterwards turned into an indictment, there the justice would be entitled to costs; or if a justice were to indict a constable or other inferior officer for disobeying his *order*, in such case also he would be entitled to his costs: but this is not a prosecution carried on by him as a magistrate, for any other person might have indicted the defendant; the offence in this case was such as concerned the general justice of the realm." *Buller, J.* "From a review of all the cases in a MS. note book, it appears that the prosecutor is not entitled to his costs; this book does not, indeed, include a case from Basingstoke, which came before this court a few years ago, but there I understand the prosecution was carried on by the clerk of the peace, whose duty it was to draw up all presentments of constables in form of indictments; and it was there determined that the prosecutor was entitled to costs. But here I cannot say it was the duty of the prosecutor as a justice of the peace to prosecute this defendant; the case originally came before him in the character of a magistrate on the complaint of some other person, and if the justice chose to take the prosecution out of private hands, and to conduct it himself, he cannot be said to prosecute as a magistrate, but like any other individual. The court has always construed this Act of Parliament as strictly as possible (*a*); there was one case, indeed, on this statute, (*R. v. Goter*, M. 16 Geo. III.) the law of which I doubt, where it was held that a person who was injured, and was really the prosecutrix, was not entitled to costs, because her name did not appear on the back of the indictment, although it was well known she was the real prosecutrix; but I believe that case has been since overruled. (See *R. v. Smith*, *ante*, 654.) In another case, afterwards, the question was whether the prosecutor were entitled to the costs of a trial at bar; and it was determined that he was not, because the statute only extended to small offences. These cases show that the court has always put a strict construction on this Act."—Rule absolute.

In *R. v. Kettleworth*, (5 T. R. 33,) it was held that a justice of the peace who *indicted* a road out of repair, was entitled to costs after a removal of the indictment by *certiorari*, if the defendant be convicted.

So, in *R. v. Taunton St. Mary*, (3 M. & S. 465, *ante*, 654,) it was held that a constable of a manor presenting such an indictment for the non-repair of a highway within the manor, was an officer within the Act.

Where an indictment was preferred by the Metropolitan Police Commissioners for an assault upon a constable belonging to their force, it was held that they were officers within the Act. (*R. v. Earl of Waldegrave*, 2 Q. B. 341.)

Where a child, six years old, was found wandering in the parish of S., within the union of W., in London, and it appeared to be destitute, and to have been assaulted and very ill-used, and was received into the

(a) *Sed quare*, for the Act is considered a remedial law. *Ante*, 653.

union workhouse, and there maintained chargeable to S., and on being taken before two aldermen, they urged the guardians of the union to prosecute the person who appeared to have ill-used the child; it was held that the guardians who prosecuted to conviction an indictment for the assault, which was removed by the defendant from the sessions into the Court of Queen's Bench, were entitled to their costs, because it concerned them as officers to prosecute. (*Reg., on the prosecution of Guardians of West London Union, v. —*, 15 Q. B. 1060; 20 L. J. M. C. 53; see also 4 Cox, C. C. 345.)

10. Costs
after Removal
by.

The terms in the Act, "if the defendant prosecuting such writ of *certiorari* be convicted," mean convicted by a judgment. In a case, therefore, where the judgment was arrested, the court held that the defendant not having been found guilty of any offence which the law recognizes as such, (and therefore not considered as guilty persons,) ought not to be mulcted with costs for having removed a bad indictment from an inferior jurisdiction into the Queen's Bench. (*R. v. Turner*, 15 East, 570.)

Conviction
necessary.

Where the defendant had removed an indictment by *certiorari*, and had entered into the usual recognizances with two sureties, and after a verdict of guilty found against him, had obtained a rule for a new trial on payment of costs, and without paying the costs, he gave notice of trial for the next assizes to the prosecutor, who obtained a judge's order, by which, if the costs were paid by a certain day, the notice of trial was to stand good—if not, to be set aside; the defendant did not pay the costs, nor try the indictment, but died in a few weeks. On a rule obtained by the prosecutor to tax his costs, to be paid by the defendant or his bail, it was held that the bail were not liable to pay the prosecutor's costs, because they are only liable when the principal has been convicted; and that after the granting a rule for a new trial, it could not be said that there had been a conviction within the meaning of the recognizance; and that neither the defendant's default in payment of costs nor the judge's order restored the original verdict. (*Reg. v. Bowen*, 7 D. & L. P. C. 312; 19 L. J. Q. B. 63.)

Where a *certiorari* obtained by a defendant was quashed, the court had no power to give the prosecutor his costs of attending sessions. (*Reg. v. Higgins*, 5 A. & E. 554.) The master of the Crown Office, in taxing the costs, ought only to consider those which are subsequent to the *certiorari*. (2 Hawk. c. 27, s. 56; and see *R. v. Passman*, 2 Dowl. 529; 1 A. & E. 603; and see now 16 & 17 Vict. c. 30, ss. 5-7, *post*, p. 659.)

What costs
allowed.

Costs subsequent to the removal of an indictment, by the 16 & 17 Vict. c. 30, s. 6, are to be taxed according to the course of the Court of Queen's Bench, and attachment for non-payment after demand and refusal for ten days may be awarded, and the recognizance may be ordered to be estreated into the exchequer. (See section, *post*, 659.)

The costs of the counts only on which the defendant is convicted should be allowed. (*Reg. v. Hawdon*, 3 P. & D. 44; 11 A. & E. 143.)

Where several
counts.

The costs of conveying a defendant to gaol, in execution of his sentence, are reasonable costs within 5 & 6 W. & M. c. 11, s. 3. (*R. v. Gilbie*, 5 M. & S. 520.) The defendant was indicted for a misdemeanour at the Northumberland quarter sessions, and was afterwards found guilty, by *certiorari* into the Queen's Bench, and was afterwards found guilty, and sentenced to two years' imprisonment in the gaol for that county, in execution of which sentence he was conveyed thither at the prosecutor's expense. This expense was allowed to the prosecutor by the master, on taxing the costs. A rule *nisi* having been obtained for the master to review his taxation, it was argued on showing cause, that this allowance was warranted by statute 5 & 6 W. and M. c. 11, s. 3, which enacts, "that if the defendant prosecuting the *certiorari* be convicted of the offence for which he was indicted, the Court of King's Bench shall give reasonable costs to the prosecutor." And it was urged, that if the

Of conveyance
to gaol.

10. *Costs after Removal by.*

indictment had been left with the sessions, this expense would not have been incurred, because the defendant would have been on the spot; wherefore it was by the defendant's own act, who removed the indictment, that the costs were incurred, and it is a part of the reasonable costs. The prosecutor, in discharge of his duty, had a right to see that the sentence of the court was executed. In support of the rule it was urged, that the statute of W. & M. did not contemplate costs such as the present, nor, indeed, any costs after judgment. And as to the defendant being the occasion of this expense, the sentence might as well have been to the prison of this court as to the county gaol. The place, therefore, of imprisonment was the act of the court. The recognizance of the defendant extends to the costs of the trial, and not of execution. The cases, *R. v. Cholesey*, (2 Cowp. 726,) and *Q. v. Summers*, (1 Salk. 55,) were cited. Lord Ellenborough, C. J., "Under the terms of the recognizance the defendant was bound to pay all reasonable costs. These costs, if not immediately occasioned by the *certiorari*, were certainly incurred in consequence of it. If the indictment had remained below, no such expense would have been incurred. The defendant's own act, therefore, may be said to have occasioned the expense. It is reasonable that the defendant should bear the expense for which no other fund is provided." *Et per Bayley, J.*, "It is a part of the prosecution to carry it to its legal conclusion." *Per Curiam*, rule discharged. (*R. v. Gilbie*, 5 M. & S. 520.)

Special jury.

The costs of a special jury cannot be allowed. (*R. v. Ld. Abingdon*, 1 Esp. 229.) An indictment removed into the Queen's Bench by *certiorari* by the defendant, and made a special jury cause by the prosecutor, came on to be tried and was immediately referred. The order of reference stated that if the arbitrator should be of opinion that the defendant was guilty, and the prosecutor entitled to costs, the defendant agreed to pay the costs. The arbitrator did so find. The Court of Queen's Bench held that the prosecutor could not recover the costs of the special jury, since the judge had not certified for those costs, (pursuant to 6 Geo. IV. c. 50, s. 34,) and the order of reference did not expressly give a power of doing so to the arbitrator; also that the general term "costs" in this order did not include those of the reference and award. (*R. v. Moate*, 3 B. & Ad. 237.)

The amount of the costs to be taxed is not limited by the recognizance, which is only a further security for them, and the court will not discharge the recognizance till the taxed costs are paid to the prosecutor. (*R. v. Teal*, 13 East, 4.)

Fine paid to prosecutor to be deducted.

If the court, on the certificate of the Queen's coroner, have given to the prosecutor one-third of the fine, they will order that sum to be deducted from the amount of the taxation. (*R. v. Osborne*, 4 Burr. 2125.) But the payment of the fine does not discharge the recognizance for the costs. (2 Hawk. c. 27, s. 53.)

Liability of one of several defendants for.

If an indictment against several defendants is removed by *certiorari* into the Queen's Bench without the consent of one, he cannot be compelled to pay the costs under the above Act, although he may have appeared and pleaded to the indictment, and been tried on it; (*R. v. Hassell*, 5 Dowl. 531;) but if one of several defendants removes the indictment, the court may make it a condition that he shall pay the costs of the prosecution occasioned by the removal in case any of the defendants be convicted. (*Reg. v. Jewell*, 7 E. & B. 140; 26 L. J. Q. B. 177.)

Liability of sureties under recognizance.

The sureties are liable under the stat. 5 & 6 W. & M. c. 11, s. 3, and their recognizance to pay the prosecutor his costs, although there is no undertaking to that effect in the recognizance, or direct provisions to that effect in the Act. (*Reg. v. Bezan*, 7 Dowl. 680; and see *Reg. v. Hawden*, 1 Q. B. 464; *Reg. v. Thornton*, 4 Exch. 820; 19 L. J. M. C. 113, post, 659; *Reg. v. Hodgson*, 1 Dears. C. C. 14; 21 L. J. M. C. 181.) And if a surety in default of payment by the defendant is compelled

to pay the costs of the prosecution, he may recover the amount from the defendant as money paid to his use. (*Jones v. Orchard*, 16 C. B. 614; 24 L. J. C. P. 229.)

By 16 & 17 Vict. c. 30, s. 6, "The costs hereinbefore respectively mentioned shall be taxed according to the course of the Court of Queen's Bench; and for the recovery thereof the persons entitled thereto shall, at the expiration of ten days after demand made of the person or persons at whose instance the writ of *certiorari* was awarded, and on oath made of such demand and refusal of payment, have a writ of attachment granted against him or them by the Court of Queen's Bench for such contempt; and the said court shall and may also order the said recognizance to be estreated into the exchequer."

The liability to pay costs under 16 & 17 Vict. c. 30, ss. 5, 6, depends upon the recognizance; and if a recognizance under sect. 5 is not taken in the proper form, it is *ultra vires*, and the court have no independent power of giving costs: therefore, where a recognizance was given by the prosecutor of an indictment at whose instance a *certiorari* had been obtained, to prosecute the indictment with effect, and to do and perform all such things as the court should direct, the court had no power after the acquittal of the defendants to tax their costs against the prosecutor in the absence of any provision to that effect in the recognizance. (*Reg. v. Inhabs. of East Stoke*, 6 B. & S. 536; 34 L. J. M. C. 190. See sect. 5, *ante*, 635.)

If the defendant forfeit his recognizance under the 5 & 6 W. & M. c. 11, by not going to trial at the time specified, it will not be discharged on the application of the sureties until the costs of not proceeding to trial have been paid, notwithstanding the defendant was afterwards acquitted and taken in execution for the amount of the taxation. (*R. v. Lyon*, 3 Burr. 1461; *R. v. Turner*, 15 East, 572, *ante*, 657; *R. v. Teal*, 13 East, 4.)

On the removal of an indictment for the disobedience of an order of sessions by *certiorari* into the Queen's Bench, upon which the defendant was convicted, and subsequently taken in execution for non-payment of the prosecutor's costs, and the recognizances estreated into the Court of Exchequer, that court ordered all proceedings upon the recognizance to be stayed as against the defendant, but seemed to consider that the sureties would not thereby be discharged from their liability to pay costs. (*Reg. v. Thornton*, 4 Exch. 820; 19 L. J. M. C. 113.) And the sureties were held not to be released from their liability for costs under their recognizances entered into in pursuance of 5 & 6 W. & M. c. 11, when the defendant who had removed an indictment for nuisance was convicted, and the prosecutor had his costs taxed, and afterwards the defendant became bankrupt, and under his bankruptcy the prosecutor proved for his costs; for although the principal debt had been proved under the bankruptcy, and the court would not therefore grant an attachment against the defendant, it nevertheless ordered the recognizances of the bail to be estreated into the exchequer. (*Reg. v. Hills*, 2 E. & B. 176; 22 L. J. Q. B. 322.)

If the defendant be found guilty, and die before the day in banc, his bail are liable to pay the costs. (*R. v. Turner*, 3 B. & C. 160; 4 D. & R. 816.)

The sum when duly ascertained by the master becomes a vested debt, and if the prosecutor die before it is paid, his personal representatives may recover it. (*R. v. Chamberlayne*, 1 T. R. 104; *R. v. Turner*, 15 East, 573.)

Where the prosecutor of an indictment has removed it by *certiorari*, and there is no irregularity in the proceedings, the Court of Queen's Bench cannot, upon any representation of hardship imposed on the defendant, oblige the prosecutor to pay him his costs incurred below. (*R. v. Passman*, 1 A. & E. 603.)

In *R. v. Tremearne*, (5 B. & C. 761; 8 D. & R. 590, 684,) where

10. Costs after Removal by.

How costs to be taxed and recovered

Bankruptcy of principal no release.

Death of principal after conviction and before day in banc no release.
Death of prosecutor.

When defendant is entitled to costs.

10. *Costs after Removal by.*

a true bill for perjury was found, and the judge at the assizes having refused to try it on account of manifest imperfections in the record, a new bill was preferred, whereupon the defendant was found guilty, but a new trial granted, and then the prosecutor, instead of taking down the old record, again preferred a new indictment for the same offence, and removed it into the Queen's Bench by *certiorari*, the court refused to stay the proceedings upon that indictment until the prosecutor paid the costs of the former proceedings.

In *Jones v. Davies*, (1 B. & C. 143,) indeed, where a cause had been improperly removed by *certiorari* from the great sessions for Cardigan, it was held that the Court of Queen's Bench acquired a jurisdiction over the costs below by the *certiorari*, and that the master might tax them as he did in other cases. But that decision went on special grounds.

In *R. v. Bartrum*, (8 East, 269,) the defendant was indicted for perjury, and the indictment was removed from the sessions to the Queen's Bench by *certiorari*. The prosecutor gave notice of trial to the defendant, but on the day of trial withdrew the record without having countermanded the notice in due time. And it was held by the court that he must pay the costs of the trial as in other cases. (And see *R. v. Gilbie*, 2 Chit. Rep. 159; *R. v. Johnson*, R. & M. C. C. 173; *R. v. Watton*, 4 C. & P. 229.)

Where a prosecutor, having removed an indictment by *certiorari*, gave notice of trial for the assizes and brought down the record, and withdrew it after it had been entered for trial, it was considered that the judge at the assizes could not order the prosecutor to pay the defendant the costs of the day; but that the motion must be made in the Court of Queen's Bench. (*R. v. Watton*, 4 C. & P. 229.)

Costs after removal of a conviction.

After removal of a conviction, &c.—By the 5 Geo. II. c. 19, s. 2, (*ante*, 630,) the condition of the recognizance (directed to be taken on a *certiorari* to remove judgments or orders of magistrates) is to pay the prosecutor his full costs in one month after confirmation of the order. And by section 3, a similar provision is made for the recovery of the costs as by the above statute of Will. & M. The enactment of sect. 3 is as follows:

Recognizances to be certified into the King's Bench.

Sect. 3. "That the recognizance and recognizances to be taken as aforesaid shall be certified into the Court of King's Bench at Westminster, and there filed with the *certiorari* and order, or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons entitled to such costs for the recovery thereof, within ten days after demand made of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt, and the said recognizance so given upon the allowing of such *certiorari* shall not be discharged until the costs shall be paid, and the order so confirmed shall be complied with and obeyed."

Attachment for contempt.

The discharge of the rule for quashing the order of sessions confirms the order. (*Reg. v. Inhab. of Litchford*, 6 Q. B. 567, see *ante*, 641.)

When there is no recognizance taken on removing summary proceedings, there are no costs, for the court has in that case no power to tax them by virtue of any of the statutes relating to criminal proceedings. (*R. v. Jenkins*, 4 Burr. 2126; 2 *Id.* 417.) And if the recognizance be as at common law, and not upon the statute, the court will not order the recognizance to stand as a security for the prosecutor's costs. (1 Burr. 11; 2 *Str.* 1165; *Reg. v. Inhabitants of East Stoke*, 6 B. & S. 536; 34 *L. J. M. C.* 190.)

Showing cause in first instance.

Poor Law Commissions who show cause in the first instance against an application for a *certiorari* under the 4 & 5 Will. IV. c. 76, s. 106, will be allowed their costs if the writ is refused. (*Reg. v. Poor Law Commissioners for England and Wales*, 9 Q. B. 291.) Though it is said

that the general practice is that a person showing cause in the first instance shall not have costs. (*Id. Chitty's Statutes*, tit. "*Certiorari*," Vol. I., p. 479, and cases there cited.)

Where an order of sessions is brought up with a case reserving points raised on both sides, and the court confirmed the order, but both sides failed upon all the points raised by them, neither party is entitled to costs under the 5 Geo. II., c. 19, s. 2. (*Reg. v. Southampton Dock Company*, 20 L. J. M. C. 228.)

Where order confirmed on a case from sessions on a point not raised in the case.

XI. Forms.

In the Queen's Bench.

A. B. of, &c. [gentleman,] maketh oath and saith, that at the last general quarter sessions of the peace holden in and for the county of S. a bill of indictment was preferred and found against the inhabitants of the parish of C. in the said county, for a nuisance in not repairing a certain common Queen's highway, leading from M. in the said county of S. towards and unto the town of B. in the county aforesaid, from the entrance into a lane called D. at a place called D. opposite to J. F.'s house, containing in length one quarter of a mile, and in breadth fifteen feet, extending from thence in a western direction as far as N. bridge, in which said indictment it is alleged that the inhabitants of the parish of C. aforesaid ought to repair and amend the same common Queen's highway, when and so often as it shall be necessary; and the deponent saith that the right or title to repair the said highway will come in question upon the trial of the said indictment as this deponent is advised and verily believes; and the determination of the said indictment may materially affect other parishes similarly circumstanced, by reason of the inclosures lately made in that part of the country, under and by virtue of an Act of Parliament passed in the year of her present Majesty's reign, intituled "*An Act*," &c.; and this deponent further saith, he is advised and believes that it will be proper to have the said indictment tried by a special jury, and absolutely necessary that the jury before whom the said indictment is tried should, previous to the trial thereof, view the said highway, which the defendants cannot have the benefit of at the sessions.

(1.) Affidavit by defendant for *certiorari* to remove an indictment from sessions, for not repairing a highway (a).

In the Queen's Bench.

A. B. of the parish of , in the county of , and [six other deponents] and C. D. of the city of , attorney, and E. F. of , clerk to the said C. D. severally make oath and say, and first this deponent A. B. on his oath saith, that he, this deponent, on Saturday the twenty-first day of September, now last past, was taken up at his parsonage house at aforesaid, by one of the constables of the hundred of , in the said county, upon a warrant under the hands and seals of R. B. N. and S. F. P. Esquires, two of her Majesty's justices of the peace for the said county, which warrant is hereunto annexed, and is marked A., upon a charge made by W. H., late a servant boy of this deponent, for an assault and misdemeanour on the person of the said W. H., and that about five o'clock in the afternoon of the same day he was taken to , in the said county, before the said justices, to answer the said complaint, and was committed for want of bail to the common gaol at , in the said county, to take his trial at the ensuing quarter sessions of the peace for the said county, to be held at , on the fourteenth day of October instant, upon a warrant of commitment of the said justices for the said assault and misdemeanour. And this deponent further saith, that he hath used his best endeavours to obtain a copy of the said warrant of commitment to the said gaol, but without effect, and

(2.) Affidavit on which to apply to a judge for a *certiorari* to remove depositions, commitment and recognizance on a charge of a misdemeanour (unnatural practices) before indictment found at sessions, into the Queen's Bench (b).

(a) This form is given merely to show the nature of the affidavit required.

(b) This form was approved of by the late Lord Wensleydale, who issued a

certiorari to remove depositions and recognizance before indictment found. The defendant on the trial was honourably acquitted.

11. *Forms.*

that he, this deponent, was on Monday the twenty-third day of September last past, admitted to bail upon the said charge by the Right Honourable the Earl of E., a justice of the peace for the said county, himself in three hundred pounds, and two sureties in two hundred pounds each, to appear at the next ensuing quarter sessions. And this deponent further saith, that he is informed and advised and verily believes that in the neighbourhood in which he, this deponent, resides, and also in that part of the said county where the next and any other quarter sessions for the said county will be held, great, unjust, and unfounded, but violent prejudices have been excited against him in relation to the said charge, and that the most untrue, unjust, but very injurious reports and representations relating to the same have been maliciously and very industriously circulated in and throughout the said county, asserting in direct terms the opinions of the persons making and circulating the said reports, that this deponent hath been and is guilty of committing an unnatural crime, and also unnatural attempts and practices. And further, that in the said neighbourhood as well as throughout the said county there unhappily exists, not only against this deponent but generally against all the clergy, unjust but strong prejudices, insomuch that very many of those persons in the said county who would probably constitute the grand jury at the said quarter sessions, would, in the judgment, belief, and expectation of this deponent, be improperly biased and prejudiced against this deponent as well in respect of his being a clergyman as in respect of the said reports, and also on account of the lamentable truth of several clergymen having of late years been convicted of offences of that nature, and on account thereof this deponent and his family and friends are informed and advised, expect and verily believe that no bill of indictment can be preferred to any jury of the said county against this deponent, and duly and fairly submitted to their candid and just consideration, unless they shall have received and duly heard and considered the charge and directions of one of the superior judges, in regard to their duty to observe impartiality, and avoid such prejudice. And this deponent further saith, that under the circumstances he is further informed and advised, and verily believes that he cannot be nor would be fairly tried by any jury at any quarter sessions or other sessions of the said county. And this deponent further saith, that he is advised and verily believes that being indicted for a misdemeanour, he will not be entitled to challenge any of the said jurors. And this deponent further saith, that he has lately had angry disputes with the said R. B. N. (one of the committing magistrates, and who occupies land in the said parish of _____,) about his tithes, which disputes are not settled, and that when brought before the said R. B. N. on this charge, and being, as appeared to this deponent, treated with great harshness by the said R. B. N., he remonstrated with him on the impropriety of his acting in it, on account of these disputes. And this deponent further saith, that should this case be tried at the sessions, he would probably be on the bench of justices on that occasion. And this deponent further saith, that if the said trial of any indictment against him founded on the said charge should take place at the next or any subsequent sessions, he, this deponent, cannot expect nor could have a fair and impartial trial. And this deponent further saith, he is advised and believes that it will be proper and absolutely necessary that he should have the said indictment tried by a special jury at the assizes for the said county before one of the superior judges, whose weight and just influence would in all probability secure a fair trial; and also because it is essential that he, this deponent, should have the advice and assistance of Queen's counsel, or at least of counsel of greater experience than those who usually practise at the sessions. And this deponent further saith, that he is wholly innocent of the crime imputed to him by the said W. H. in his deposition, on which the charge is founded, and that he has never committed nor attempted to commit an unnatural crime with or upon the said W. H. or any other person whomsoever. And this deponent further saith, that the said W. H. came into his service at Michaelmas, 1829, and that he turned him away early in March last for improper behaviour; and that he hath charged this deponent with having committed acts of indecency towards him so long ago as the month of October, 1829, during the greater part of which said month of October he, this deponent, was from home at Bognor and the Isle of Wight, and the said W. H. was at _____. And this deponent is informed and verily believes that the said charge and prosecution have originated and all proceedings in a foul conspiracy. And this deponent for the purposes of justice will disclose the parties thereto when duly required so to do. And this deponent further saith, that he is a clergyman, a prebendary of the cathedral church of _____, rector of the parish of _____, vicar of the parish of _____, in the said county of _____.

11. Forms.

, and was domestic chaplain to the late bishop of _____ for many years, and up to the time of his death; and that he is of the age of forty-five years, and has been such clergyman for twenty-two years and upwards, and that he hath a wife with whom he now and for seventeen years has lived in perfect happiness, and that he has eight children now living, all of whom reside constantly with this deponent and his said wife. And this deponent lastly saith, that as well for his own sake and for the sake of the clergy in general, and for the sake of his said wife and children, he is most anxious that the proceedings on the said charge should be removed into the Court of Queen's Bench, inasmuch as he is confident that no grand jury of any county, after hearing the charge of an enlightened judge, and cautioned against indulging prejudice, and to examine the witnesses brought before them in support of the said charge, will ever find any bill of indictment against him; and that thereby this deponent and his wife and family will avoid the anguish and disgrace even of a bill of indictment having been found a true bill, or of any pending prosecution. And this deponent, the said E. F., saith, that he attended at _____, on the said twenty-third day of September, with the bail before the magistrate who took the recognizances of bail, and then saw and read over the said warrant of commitment of the said A. B., and that was for an assault and misdemeanour on the person of the said W. H., and in the words and to the effect only of the warrant for apprehending the said A. B. hereunto annexed, and not for any more serious offence. And this deponent, the said C. D., for himself saith, that he and his father are the solicitors of the said A. B., and that they wrote to Messrs. E. and H., the clerks to the magistrates acting at _____, for a copy of the warrant of commitment, and that they received the two letters in reply hereunto annexed, marked B. and C. And this deponent further saith, that he applied through their clerk, Mr. R. W., to the committing magistrates, for a copy of the informations against the said A. B. and warrant of commitment, and was informed shortly afterwards by the said R. W. that copies of the information could not be given, and that he had not the warrant of commitment. And these eight other deponents severally make oath and say, that they have known and been in habits of intimacy and friendship with the said A. B. for a great many years, and that during all such time the said A. B. has borne a most irreproachable and exemplary character in society for good conduct and morality. And these deponents believe that the said A. B. has constantly lived with his wife on terms of mutual affection and kindness, which is not usually the characteristic of a person addicted to the depraved propensities imputed to him. And these deponents severally further say, that they believe that although the said A. B. hath, from the smallness of his income and his large family, been long labouring under great pecuniary difficulties, yet that except as respects this particular false imputation, he has never before been charged with any such or similar crime. And these deponents severally further say, that the habits of the lower classes in that part of the country where the said A. B. resides, and the neighbourhood about it, are very loose and depraved, and on the commonest occasions they impute to each other even the capital charge. And these deponents severally further say, that they recollect a few years ago a case which was tried at _____ assizes, where a foul charge was made against a highly respectable clergyman (lately deceased) by two persons, who it was clearly proved, as these deponents believe, made the threat to impute the offence for the purpose of extorting money, and that they were transported for life. And these deponents further severally say, that very lately a mob of the lowest order assembled at a town about seven miles distant from the residence of the said A. B., and carried about the streets the effigy of a gentleman of great respectability with a beastly and unqualified written charge of a similar offence attributed to the said A. B.

The above named deponents, A. B., C. D., &c. were severally } A. B.,
 sworn at the city of _____ the eighth day of October, } C. D., &c.
 A. D. 1833.

Before me,
 J. D. N., a commissioner for taking affidavits in the said Court.

11. *Forms.*

(3.) Recognizance to appear and plead to an indictment in Queen's Bench (a).

London } BE it remembered, that on in the day of
to wit. } A. D. A. B. (now a prisoner in her Majesty's gaol of New-
gate), but late of , in the county of ; C. D. of
and E. F. of , came before me, Sir John Patteson, knight, one of her
Majesty's justices of the Queen's Bench, and acknowledged to owe to our said Lady
the Queen the several sums following, that is to say, the said A. B. the sum of 200*l.*,
and the said C. D. and E. F. the sum of 100*l.* each, of lawful money of Great
Britain to be levied upon their several goods and chattels, lands and tenements, to
her Majesty's use, upon condition that if the said A. B. shall appear in her
Majesty's Court of Queen's Bench at Westminster, on the first day of next
Term, and shall plead to all and singular indictments of whatsoever
misdemeanours whereof he stands indicted, and at his own proper costs and charges
shall cause and procure the issue or issues that may be joined thereon to be tried in
the same term, or at the sittings of nisi prius to be holden after the same term, in
and for the city of London, if the said court shall not appoint any other time for
the trial thereof, and if the said court shall appoint any other time, then at such
other time, and shall give due notice of such trial to the prosecutor or his clerk in
Court, and shall personally appear on the trial of the said indictment from day to
day in the said Court, and not depart until discharged by the said Court, and
shall also pay to the prosecutors of such indictment in case he, the said A. B. shall
be convicted thereon, their costs subsequent to the removal of the said indictment
into the said Court of Queen's Bench, then this recognizance to be void, or else to
remain in full force.

Taken and acknowledged the day and year first aforesaid, at
before me,

J. Patteson.

(4.) Notice of bail after removal of indictment into Queen's Bench.

In the Queen's Bench.

The Queen
against

A. B. on the prosecution of G. H.

SIR,

TAKE notice, that the above-named defendant will put in bail in this
cause before the Honourable Mr. Justice , at his chambers in [Rolls
Garden, Chancery Lane], to-morrow, at in the forenoon, for his
appearance in this honourable court in next term, then and there to
answer and plead to the indictment you preferred against him at the last [general
quarter] sessions of the peace of the county of , and which you have
since removed into this honourable court; the names of the bail are C. D. of, &c.
[gentleman], and F. F., of, &c. [merchant]. Dated this day of ,
A. D. .

Yours, &c.

J. J., attorney for the above-named defendant.

To Mr. K. L., attorney for the prosecution.

(5.) Certiorari to justices of assize to remove an indictment from assizes.

VICTORIA, by the grace of God of the United Kingdom of Great Britain
and Ireland Queen, Defender of the Faith, to our justices assigned to hold our
assizes in and for our county of , and to every of them, greeting. We
being willing, for certain reasons, that all and singular indictments of whatsoever
trespasses, contempts, and misdemeanours, whereof C. D. is indicted before you (as
it is said), be determined before us and not elsewhere, do command you and every
of you, that you or one of you do send under your seals, or the seal of one of you,
before us, immediately on the receipt of this our writ at Westminster, all and
singular the said indictments, with all things touching the same, by whatsoever
name the said C. D. is called in the same, together with this our writ, that we may
further cause to be done therein what of right and according to the law and
custom of England we shall see fit to be done. Witness, Sir Alexander James

Edmund Cockburn, Baronet, at Westminster, the
in the year of our reign.

day of , 11. Forms.

By the Court.

Indorsed, "At the instance of the prosecutor" [or "of the said C. D."]

If obtained by rule of court, add "By rule of Court."

VICTORIA, by the grace of God of Great Britain and Ireland Queen, Defender of the Faith, and so forth, to the keepers of our peace and to our justices, to hear and determine divers felonies, trespasses, and other misdemeanours committed within our county of , and to every of them, greeting. We being willing, for certain reasons, that all and singular indictments of whatsoever trespasses, contempts, and assaults, whereof G. A. and M. O. [gentlemen], are indicted before you (as it is said), be determined before us, and not elsewhere, do command you and every of you, that you or one of you do send, under your seals, or the seal of one of you, before us immediately after the receipt of this our writ at Westminster, all and singular the said indictments, with all things touching the same, by whatsoever name the said G. A. and M. O. are therein called, together with this our writ, that we may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. Witness, Sir Alexander James Edmund Cockburn, Baronet, at Westminster, the day of , in the year of our reign. By the Court.

(6.) Certiorari to remove an indictment from quarter sessions into Queen's Bench.

Add the indorsement as in preceding form.

First, on the back of the writ write the following words :

The execution of this writ appears in a schedule hereunto annexed.

The answer of J. P., Esq., and the justices assigned to keep the peace in and for the county of .

(7.) Return thereto.

Then write on parchment the following schedule :

County of } I, J. P., chairman of the quarter sessions of the peace for the said
to wit. } county of , and one of the justices of our sovereign Lady
the Queen Victoria, assigned to keep the peace in and for the said
county, and also to hear and determine divers felonies, trespasses, and misdemeanours in the said county committed, by virtue of this writ to me delivered, do, under my seal for myself and other the justices assigned to keep the peace in and for the said county, humbly certify unto her Majesty, in her Court of Queen's Bench, the indictment of which mention is made in the said writ, together with all things touching the same. Given at , the day of , in the year of the reign of Queen Victoria.

J. P. (L. S.)

To A. B., Esquire, one of her Majesty's Justices of the Peace in and for the [or as the case may be].

WHEREAS, you did on the day of , in the year of our Lord , take the examinations of and , and upon such examinations as aforesaid [or as the case may be], did make and issue your order [or "did convict," &c. as the case may be]. And whereas it appears that [here state the objections to the order, conviction, or other proceeding], and moreover that the said order [conviction, or other proceeding as the case may be], was irregular and illegal, wherefore the said being resolved to seek a remedy for the injury which he [or they] has [or have] received and sustained by means of the said order [or conviction, or other proceeding]: I do hereby, on the behalf of the said , according to the form of the statute in that case made and provided, give you notice that her Majesty's Court of Queen's Bench will, in six days from the time of your being served with this notice, as soon after as counsel can be heard, be moved on behalf of the said , for a writ of certiorari to issue out of the said court, and to be directed to [the proper officer of the quarter sessions of the peace, if it be a record of sessions, or other-

(8.) Notice of intended motion for certiorari to remove a conviction, &c.

11. *Forms.* wise to the justice in whose possession it ought to be], for the removal of the record of, &c. [as the case may be], into her Majesty's said Court of Queen's Bench.
 Dated the _____ day of _____, A. D. _____
 P. Q., Attorney for the said _____

(9.) *Certiorari* to two committing justices, to certify information, examination, and depositions, upon which prisoner was committed.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to C. D. and E. F., Esquires, two of our justices assigned to keep our peace in and for our county of _____, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed within our said county, and to every of them, greeting. We being willing, for certain reasons, that all and singular informations, examinations, and depositions taken by and remaining with you, or either of you, in a certain case of felony or suspicion of felony charged against A. B., and for which you or one of you have committed the said A. B. to the prison of _____, as it is said, be sent by you before us, do command you and every of you, that you or one of you do send us, immediately after the receipt of this our writ, all and singular the said informations, examinations, and depositions, with all things touching the same, as fully and perfectly as they have been taken before you and now remaining in your custody, by whatsoever name the said A. B. is called in the same, together with this writ, that we may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. Witness, Sir Alexander James Edmund Cockburn, Baronet. At Westminster, the _____ day of _____, in the _____ year of our reign.

[Indorse it as directed in the form, ante, No. 5.]

(10.) *Certiorari* to two justices to remove a conviction into Queen's Bench.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [A. B., Knight, Mayor of the city of York,] and [J. L., Knight], two of our justices assigned to keep our peace in and for our said city [or county], and also to hear and determine divers felonies, trespasses, and other misdeeds committed within our said city [or county], and to every of them greeting. We being willing for certain causes, that all and singular records of conviction, of whatsoever trespasses and contempts against the form of statute, intituled "An Act, &c.," whereof C. D. is convicted by you (as it is said), be sent by you before us, do command you, that you send, or one of you do send all and singular the records of conviction aforesaid, with all things touching the same, by whatsoever name the said C. D. may be named therein, before us, under your seals or the seal of one of you, immediately after the receipt of this our writ at Westminster, together with this our writ, that we may further cause to be done thereon that which of right and according to the law and custom of our realm of England we shall see fit to be done. Witness, Sir Alexander James Edmund Cockburn, Baronet, at Westminster, the _____ day of _____, in the _____ year of our reign.

[Indorse it as directed in the form, ante, No. 5.]

(11.) Return from a single justice.

County of _____ } I, J. P., Esq., one of the justices of our Lady the Queen, assigned to wit. } to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and misdemeanours in the same committed, by virtue of this writ to me delivered, do under my seal return unto her Majesty, in her Court of Queen's Bench, the conviction of which mention is made in the same writ, together with all matters touching the same. In witness whereof I, the said _____, have to these presents set my seal. Given at _____ in the said county, the _____ day of _____, in the year of our Lord _____.

J. P. (L. S.)

[Indorse the above on the writ of certiorari. The return may be with a schedule, as in the form, ante, 665, (No 7,) leaving out the statement of the justice being chairman, and of the return being made on behalf of other parties, and substituting the word "conviction" for "indictment."]

VICTORIA, &c. To the keepers of our peace and justices assigned to hear and determine divers felonies, trespasses, and other misdemeanours committed within our city [or county] of _____, and to every one of them, greeting. Whereas lately by our writ we commanded you, and every of you, for certain reasons, that you, or one of you, send under your seals or the seal of one of you, before us, at Westminster, at a certain day now past, all and singular indictments of whatever [felonies] whereof R. S. was indicted before you (as was said), with all things touching the same, by whatever name the said R. S. should be called therein, together with the said writ to you directed that we might further cause to be done thereon what of right and according to the custom of England we should see fit to be done. We do now, for certain reasons us thereunto specially moving, command you, and every of you, that you do wholly supersede whatsoever is to be done concerning the execution of that our said writ; and that you proceed to the determination of the said indictment against the said R. S. for the said offence, with that expedition which to you shall seem right and according to the law and custom aforesaid, notwithstanding our writ as before sent to you directed for the purpose aforesaid. Witness, Sir Alexander James Edmund Cockburn, Baronet, this _____ day of _____, in the twenty-fifth year of our reign.

Challenge to Fight.

(12.) Form of procedendo.

By the Court.

Challenge to Fight.

WE have already seen, (*ante*, 342,) that the attempt or incitement to commit felony is in itself a misdemeanour, and so is the sending a challenge to fight, or the giving language which tends to the same end, or the acts of posting of opprobrious expressions which have the tendency to a breach of the peace, and they are indictable as misdemeanours at common law. (3 *Inst.* 157; *Com. Dig. Battle* (B.); 1 *Hawk.* c. 26, s. 5; *R. v. Rice*, 3 *East*, 581; *R. v. Phillips*, 6 *East*, 464.)

Mere words, which though they may produce a challenge, do not directly tend to that issue, as calling a man a liar, are not necessarily criminal; (*R. v. Langley*, 2 *Ld. Raym.* 1031; *R. v. Phillips*, 6 *East*, 471;) though it is probable they would be so, if it could be shown they were meant to provoke a challenge. And the same words, if written, might probably from the subject of an indictment or action for a libel.

In the case of an information laid before a magistrate of a challenge given, he should forthwith issue his warrant to bring the parties before him, and require them to find sureties to keep the peace, and as to which, see "*Surety of the Peace*," Vol. V.

Surety to keep the peace.

A challenge is one of those offences for which a criminal information will be granted by the Court of Queen's Bench. But this will not be granted where the party applying has first incited the proposal. (*R. v. Hankey*, 1 *Burr.* 316.) Nor if in the course of the transactions out of which the challenge arose, he has himself sent a challenge to a third person connected with the party against whom he moves. (*R. v. Larriue*, 7 *A. & E.* 277.) And this, although the prosecutor's challenge was sent into a foreign country, and did not show any intention to break the peace here. (*Id.*) The original letters need not be produced on the application, but copies of them will suffice, if sufficiently verified as correct. (*R. v. Chappell*, 1 *Burr.* 402.) An affidavit of the party applying for the information that B. had brought him a challenge from C., and that B. had refused to make an affidavit that C. sent him with it, is not evidence on which the court will grant even a rule *nisi* for the information against C. for sending the challenge. (*R. v. Willett*, 6 *T. R.* 294; see "*Information*," Vol. III.)

Criminal information for,

The publication of a libellous letter with the intent to provoke a challenge is sufficiently proved by showing that the letter was put into

Challenge to Fight.

Venue.

the post-office, though sealed up, with the intent that it should be delivered to the prosecutor elsewhere, whether it was so delivered or not. (*R. v. Williams*, 2 *Campb.* 506.) And the offence is deemed to have been committed where the letter was posted: thus, where the defendant put the letter into the post-office in Park Street, Westminster, addressed to the prosecutor in the City of London, the trial was had, and the defendant convicted thereof in Middlesex. (*Id.* See *Reg. v. Rogers*, 1 *L. R. C. C. R.* 136; 37 *L. J. M. C.* 83.)

Punishment.

The punishment is fine and imprisonment, or both, as in other cases of misdemeanour. (*R. v. Rice*, 3 *East*, 514; see "*Misdemeanour*," Vol. III.)

The 9 Ann. c. 14, s. 8, so far as it relates to the forfeiture and punishment of persons assaulting and beating, or challenging or provoking to fight, any other person, on account of money won at play, is repealed by 9 Geo. IV. c. 31.

Duelling.

As to duelling, see "*Homicide*," Vol. II.

(1.) Commitment for sending a challenge.

[Commencement as usual, as *ante*, p. 11]: *That the said C. D. on the day of* A. D. *at the parish of* *in the said county, unlawfully, wilfully, and maliciously did compose, write, send and deliver, to one A. B., a certain letter and paper writing, containing a challenge to fight a duel with and against him the said C. D. These are therefore, &c. [as usual, as ante, p. 11, to the end.]*

(2.) Commitment for provoking a man to send a challenge.

[Commencement as usual, as *ante*, p. 11]: *That the said C. D. on the day of* A. D. *at the parish of* *in the said county, unlawfully, wilfully, and maliciously did speak, declare, say and publish to and in the presence and hearing of one A. B., certain provoking, malicious and scandalous words, with intent to instigate, excite and provoke the said A. B. to fight a duel with and against him the said C. D. These are therefore, &c. [as usual, as ante, p. 11, to the end.]*

(3.) Indictment for sending a challenge to fight a duel.

— to wit. *THE jurors for our Lady the Queen upon their oath present, that C. D. on the day of* *in the year of our Lord* *, being a person of a turbulent and quarrelsome temper and disposition, and contriving and intending not only to vex, injure and disquiet one A. B., and to do the said A. B. some grievous bodily harm, but also to provoke, instigate and excite the said A. B. to break the peace and to fight a duel with and against the said C. D. on, &c., at the parish of* *in the county aforesaid,* unlawfully, wilfully, and maliciously did compose, write, send and deliver, and cause and procure to be composed, written, sent and delivered unto the said A. B. a certain letter and paper writing containing a challenge to fight a duel with and against the said C. D. and which said letter and paper writing is as follows, that is to say: [set out the letter verbatim, with innuendoes, if necessary:] to the great damage, scandal and disgrace of the said A. B., and against the peace of our said Lady the Queen, her crown and dignity. And the jurors aforesaid upon their oath aforesaid, do further present, that the said C. D., contriving and intending as aforesaid, afterwards, at the parish aforesaid, in the county aforesaid, unlawfully, wilfully, and maliciously did provoke, instigate, excite and challenge the said A. B. to fight a duel with and against him the said C. D., to the great damage of the said A. B., and against the peace of our said Lady the Queen, her crown and dignity. [If no duel was fought alter the second count, stating merely the attempt to provoke, &c.]*

Second count.

(4.) Indictment for provoking a man to send a challenge.

Commence as in the preceding form to the *): *unlawfully, wilfully, and maliciously did speak, declare, say and publish to, and in the presence and hearing of the said A. B. these words following, that is to say: [here set out the words*

used,] with intent to instigate, excite, and provoke the said A. B. to challenge him the said C. D. to fight a duel with and against him the said A. B., to the great damage of the said A. B., and against the peace of our said Lady the Queen, her crown and dignity.

*Charitable
Trusts and
Donations.*

Charitable Trusts and Donations.

[52 Geo. III. c. 102; 16 & 17 Vict. c. 137, s. 18.]

THE stat. 52 Geo. III. c. 102, for registering and securing of charitable donations, after reciting that "charitable donations have been given for the benefit of poor and other persons in England and Wales to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved," enacts, "that a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all and every charity and charities, and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefited, increased, or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or control, the deeds, wills, and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefited, increased, or secured, may be, and also of the names of the then trustee or trustees, feoffee or feoffees, possessor or possessors of such real or personal estate, shall, from and after six calendar months after the passing of this Act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this Act annexed, in the office of the clerk of the peace of the county, or city or town being a county of itself, within which such poor or other person shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered and left in the said office of such clerk of the peace, who shall forthwith transmit a duplicate or copy of the same unto the Enrolment Office of the High Court of Chancery."

Sect. 2. "Wherever any such charity or charitable donations shall be founded, established, made or benefited, increased or secured by any deed, will, or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions hereinbefore contained, shall be registered, and left and transmitted as aforesaid, by such person or persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument shall have been made or executed."

Sect. 3. "For the purpose of such registries of such memorials or statements, the clerk of the peace for the time being of each and every county, or city or town being a county of itself, or riding within England and Wales, shall, as there shall be occasion, provide proper books of parchment or vellum, wherein such registers shall be made and entered; and every such original memorial or statement, and every such book provided as aforesaid, shall be carefully kept and preserved for public use and inspection in the office to which it shall belong, together with a correct index, to be made from time to time by such clerk of the peace, of such charities and charitable donations, dis-

52 Geo. III.,
c. 102.

Deeds, &c.,
respecting
charitable
donations already
founded to be
registered.

The like of
charitable
donations here-
after founded.

Clerk of peace to
provide books
wherein registries
to be made.

Charitable Trusts and Donations.

Notice in *London Gazette*, if persons benefited be not wholly in one county.

If donations not registered, petition may be presented to Lord Chancellor, &c., complaining thereof.

No proceedings to decide any right or title.

Clerk of peace to make searches, and give copies of registers.

Allowance to clerk of peace,

and to person inserting notification in *Gazette*.

Time to be allowed to register memorial where difficulties occur.

tinguishing each by the name of the original or first donor or founder thereof, where known, or the appellation or title most generally used for such charity or charitable donations."

Sec. 4. "In case the persons to be benefited by any such charity or charitable donations as aforesaid shall not be wholly within any one county, then and in such case such clerk of the peace of the county where any such charity or charitable donation shall be registered, shall forthwith notify in the *London Gazette* the name or title thereof, according to the appellation or title used in the index aforesaid, and the names of the several places wherein the objects of such charity or charitable donations shall be, and the particular or general objects thereof, and also of the name of the county wherein such memorial or statement shall have been registered."

Sec. 5. "If any such charity or charitable donation shall not be duly memorialized, stated and registered according to the provisions of this Act, it shall and may be lawful for any two persons or more, interested in such charity or charitable donations, to present a petition to the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the great seal, or Master of the Rolls for the time being, or the Court of Exchequer, complaining thereof; and they are hereby required to hear such petition in a summary way, and upon affidavits, or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such application and proceedings, as to him or them shall seem fit, and which order shall be final and conclusive."

Sec. 6. "No proceedings under the provisions hereinbefore mentioned shall extend or be construed to extend to decide any right or title as to the property that shall be so registered, or as to the persons who shall be entitled, or claim to be entitled, to the benefit thereof, or any interest therein."

Sec. 7. "All and every clerk of the peace of the several counties and ridings in England and Wales, shall, as often as required, make searches concerning all memorials and statements directed by this Act to be entered in his or their office as aforesaid, and shall also give copies of the same under his hand, if required by any person whatsoever, who shall tender or be willing to pay him the sum or sums hereinafter directed to be allowed to him for such copies of such memorials or statements as aforesaid."

Sec. 8. "Every such clerk of the peace shall be allowed for the registering every such memorial or statement as is by this Act directed, the sum of four shillings and no more, in case the same do not exceed four hundred words; but if such memorial or statement shall exceed four hundred words, then after the rate and proportion of one shilling an hundred for all the words contained in such entry, and the like fees for the like number of words contained in every copy of any entry given out of the said register, and no more; and for every notification in the *London Gazette*, the costs of such notification, and the further sum of ten shillings for drawing and inserting the same, and transmitting the duplicate or copy hereinbefore mentioned unto the Enrolment Office of the High Court of Chancery, and no more."

Sec. 9. "Where any difficulty shall occur in making and preparing such memorial or statement as aforesaid, so as to render it necessary to employ any longer time than is allowed by the provisions of this Act for registering such memorial or statement as hereinbefore is mentioned, it shall and may be lawful for the court of quarter sessions for the county, or city or town being a county of itself, wherein such memorial or statement is intended to be registered, to allow, on application made to them, and on examination of the circumstances, such further time, not exceeding six calendar months, as to such court shall seem necessary to be given for the purpose of duly registering such memorial or statement as hereinbefore is mentioned."

Sect. 10. "It shall and may be lawful for the court of quarter sessions of the county, or city or town being a county of itself, wherein such statement or memorial shall have been registered, to allow such reasonable costs and charges attending the preparing and registering, notifying and transmitting such memorial or statement, with reference to the income of the charity or charitable donation, to such person or persons causing the same to be registered, as such court shall think fit; and it shall and may be lawful for such person or persons who shall have caused such memorial or statement to be registered, to deduct out of the income, funds, rents, and profits in his or their hands of such charity or charitable donation so by him or them memorialized and stated and registered, the sum and sums so allowed, and no more: provided always, that the said court of quarter sessions shall not allow any sum whatever for and in respect of such costs and charges, unless it shall be stated to them upon the declaration in writing of the person or persons applying for such allowance, and signed by him or them, that such memorial or statement is, to the best of his, her, or their knowledge and belief, true in every respect, and that it doth contain, to the best of his, her, or their knowledge and belief, a true and full account of the real and personal estate, annual gross income, investment, and the particular or general objects of the charity or charitable donation of which such memorial or statement shall have been registered, together with the names of the respective donors or benefactors thereto, where known, and also of the person or persons in whose custody, possession or control, the deeds, wills, and other instruments hereinbefore mentioned, shall at such time be, and also the names of the trustee or trustees, feoffee or feoffees, possessor or possessors of such real and personal estate: provided always, that none of the provisions hereinbefore contained shall be construed to extend to any charity or charitable donation not issuing out of or secured upon any lands, tenements, or hereditaments, or directed by the founder or donor thereof to be secured thereon, or to be permanently invested in government or any public stocks or funds, nor to any charitable donation whatsoever, which by the direction of the donor thereof, or by the lawful rules of any charitable institution whatsoever, may be wholly or in part expended in and about the charitable purposes for which the same may have been given, at the discretion of the governors, directors, managers, or the trustee or trustees of such charitable institution at any time whatsoever."

*Charitable
Trusts and
Donations.*

Costs of preparing memorials to be allowed.

Not to extend to donations not secured upon lands; nor to charitable institutions.

Sect. 11. "Nothing in this Act shall be construed to extend to any hospital, school, or other charitable institution whatsoever, which shall have been founded, improved, or regulated by or under the authority of the King's most excellent majesty, or any of his royal predecessors, or of any special act of parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school, or institution, nor to the governors of the corporation of the charity for the relief of poor widows and children of clergymen, nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the Act or Acts for the encouragement and relief of friendly societies; nor to either of the Universities of Oxford or Cambridge, nor to any college or hall thereto belonging, nor to any charitable bequest, devise, gift, or foundation whatsoever belonging thereto, or under the control, direction, superintendence, or management of the said Universities or either of them, or any college or hall therein respectively; nor to the Radcliffe infirmary within the University of Oxford; nor to the colleges of Westminster, Eton, or Winchester, or any of them; nor to any cathedral or collegiate church within England and Wales; nor to the Charter House; nor to the corporation of the Trinity House of Deptford Strond; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation."

Not to extend to royal foundations nor to certain institutions;

*Charitable
Trusts and
Donations.*

nor to charitable
institutions of
Quakers;

nor to charitable
foundations,
accounts of which
are to be passed
in Chancery, &c.

Divers charities
may be stated in
memorial.

Sect. 12. "Nothing in this Act contained shall extend to any charitable foundation or donation which shall have been or shall be given to and for the benefit of any person or persons of the society of people called Quakers, and which shall be under the superintendence and control of persons of that persuasion."

Sect. 13. "Nothing in this Act contained shall extend to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the High Court of Chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof shall not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, shall within six months after the passing of this Act deposit in the hands of the minister of the parish wherein any of the objects of the charity, charitable donation, or foundation, shall be, a written memorial or statement in like form as in the schedule hereunto annexed is contained, and which by such minister shall be forthwith deposited in the parish chest."

Sect. 14. "Where any body corporate, guild, or fraternity, shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations and foundations, may be registered and stated in one and the same memorial."

SCHEDULE to which this Act refers.

A MEMORIAL or statement in pursuance of an Act for the registering and securing of charitable donations; whereby it is declared by the undersigned [state the name or names of the persons who sign the memorial or statement] that the real [or personal] estate [state this, as the case may be] of the [state the title or appellation of the charity or charitable donation] consists of [state this, as the case may be; and if real estate, whether it be in lands, tenements, or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements, or hereditaments, and where situate; and if personal estate, describe the nature of it, and how secured] and the gross annual income arising therefrom amounts to [state the sum] and the objects of which charity or charitable foundation are [state the general or particular objects of the charity] and which charity or charitable foundation was, according to the best of my [or our, as the case may be] knowledge and belief, founded by [state by whom; and if benefited, increased, or secured by any other person, state the same, and by whom] and the deeds, wills, and other instruments [state this, as the case may be; and if no deeds, wills, or other instruments exist, state the same] are, to the best of my [or our, as the case may be] knowledge and belief, in the custody, possession, or control [state this, as the case may be] of [state the name of the body corporate or natural person] and the trustees [feoffees, or possessors,] [state this, as the case may be] of the said real and personal estate [state this, as the case may be] are to the best of my [or our, as the case may be] knowledge and belief [state the name of the body corporate or natural person, as the case may be].

(Signed) A. B.
C. D.
E. F.

Trustee [or trustees, feoffees, possessor or possessors] of the real [or personal] estate [as the case may be] of the charity or charitable donation hereby memorialized and registered.

Giving false
evidence before
charity commis-
sioners a misde-
meanour.

By 16 & 17 Vict. c. 137, (The Charitable Trusts Act, 1853,) charitable commissioners are appointed, who sit as a board to inquire into the condition and management of charities; and by sect. 13, "If any person wilfully give false evidence upon any examination under this Act, every person so offending shall be deemed guilty of a misdemeanour."

By 18 & 19 Vict. c. 124, s. 10, power is given to apportion parochial charities after a parish has been divided either into separate parishes or districts.

